

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/STOP PRESS:  
HEALTH ACT 2009

## **HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)**

### **STOP PRESS:**

The Health Act 2009 makes provision about the NHS Constitution and about health care (including provision about the National Health Service and health bodies), and makes provision for the control of the promotion and sale of tobacco products and about the investigation of complaints about privately arranged or funded adult social care. The Act received royal assent on 12 November 2009 and ss 8, 9(5), 10, 20-23, 37, 39-41, Schs 4, 6 came into force for certain purposes or in part on that day. Section 34, Sch 4 (in part) came into force on 12 January 2010 and t. Sections 1-7, 11-13, 15 (in part), 19 (in part), 33, 36, Schs 1, 3 (in part), 18 (in part), 19 (in part) came into force on 19 January 2010; ss 15 (in part), 16, 17, 18 (in part), Sch 2 came into force on 15 February 2010; and ss 8-10 (so far as not already in force) come into force on 1 April 2010: SI 2010/30. Section 25 came into force in part on 18 March 2010 and in remainder on 24 May 2010: SI 2010/779. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

### ***Part 1 (ss 1-14) Quality and delivery of NHS services in England***

#### *Chapter 1 (ss 1-7) NHS Constitution*

Section 1 defines the 'NHS Constitution' for the purposes of Pt 1. The bodies listed in s 2 are required to have regard to the NHS Constitution. The Secretary of State has a duty under s 3 to ensure that the NHS Constitution continues to be available to patients, staff and members of the public and that, at least once in any period of ten years, a review of the Constitution is carried out. Other revisions of the Constitution may be made other than as a result of the ten-year review: s 4. Section 5 requires the Secretary of State to ensure that the Handbook to the NHS Constitution continues to be available to patients, staff and members of the public and to carry out a review of the Handbook at least once every three years, with the first review being completed no later than 5 July 2012. The Secretary of State has a duty under s 6 to publish a report every three years, the first such report to be published no later than 5 July 2012, on the effect of the NHS Constitution on patients, staff, carers and members of the public since the last report on the Constitution and to lay before Parliament a copy of each such report. Any revision of the guiding principles of the Constitution as a result of the ten-year review under s 3 or any revision of the Constitution under s 4 may only be made in accordance with regulations made by statutory instrument by the Secretary of State: s 7.

#### *Chapter 2 (ss 8-10) Quality accounts*

Primary care trusts, NHS trusts all or most of whose hospitals, establishments and facilities are in England, special health authorities, and NHS foundation trusts have a duty under s 8 to publish, in accordance with regulations made by the Secretary of State, prescribed information relevant to the quality of any NHS services provided by them, any NHS services provided under arrangements made by them by other persons, and certain primary ophthalmic services provided in England and for the provision of which the body provides assistance or support. Section 9 makes supplementary provision about the duty under s 8, and s 10 requires

regulations under s 8 to be made by statutory instrument subject to the negative resolution procedure.

#### *Chapter 3 (ss 11-13) Direct payments*

Provision under s 11 enables the Secretary of State to make a direct payment to a patient or his representative in order to purchase goods or services that might otherwise be provided by the National Health Service, and to make regulations about any such payment; and the Secretary of State may provide by regulations for pilot schemes in accordance with which direct payments may be made and may make arrangements with other bodies for their assistance in connection with direct payments. The jurisdiction of the Health Service Commissioner is extended by s 12. Section 13, Sch 1 make minor and consequential amendments relating to direct payments, including certain social care direct payments.

#### *Chapter 4 (s 14) Innovation*

In order to promote innovation in the provision of health services in England, the Secretary of State may make payments as prizes.

### **Part 2 (ss 15-19) Powers in relation to health bodies**

#### *Chapter 1 (ss 15-18) Powers in relation to failing NHS bodies in England*

Section 15, Sch 2 make provision for the de-authorisation of NHS foundation trusts. New provisions under s 16 enable the Secretary of State to appoint trust special administrators to NHS trusts and NHS foundation trusts, make further provision for the de-authorisation of, and de-authorised, NHS foundation trusts, make provision for the functions of the trust special administrators during the period of appointment, which functions include consultation by them and their recommendations to the Secretary of State, and provide for the Secretary of State's final decision in relation to a trust. Under s 17, powers are conferred on the Secretary of State to direct a primary care trust to appoint a trust special administrator to exercise on its behalf specified provider functions. Consequential amendments are made by s 18 in relation to trust special administrators.

#### *Chapter 2 (s 19) Suspension*

Section 19, Sch 3 make amendments to provide for powers of suspension in relation chairmen, vice-chairmen and other members of NHS bodies.

### **Part 3 (ss 20-36) Miscellaneous**

Section 20 amends provision relating to the exclusion for specialist tobacconists in respect of the prohibition of tobacco advertising, s 21 amends and makes further provision, in consequence of developments in technology, about the prohibition of tobacco displays. Provision is made by s 22 for regulations to prohibit the sale of tobacco from vending machines in England and Wales. Corresponding provision is made by s 23 in relation to Northern Ireland. Various minor and consequential amendments are made by s 24, Sch 4 relating to the advertising and promotion of tobacco products. A primary care trust has a duty under s 25, in accordance with regulations, to assess needs for pharmaceutical services in its area and to publish a statement of its first assessment and any revised assessment. New arrangements are made by s 26 for inclusion on a primary care trust's pharmaceutical list for the provision of NHS pharmaceutical services, and a minor amendment is made by s 27 to correct an anomaly in relation to applications for such inclusion. Section 28 provides for notices and penalties where a practitioner providing pharmaceutical services under arrangements with a primary care trust breaches a term of such arrangements. Restrictions on primary care trusts providing local pharmaceutical services or providing such services to other primary care trusts in certain circumstances are removed by s 29. Section 30 makes a minor amendment to make clear that

certain provision for the inclusion of an applicant on a local health board pharmaceutical list for a fixed period of time may apply to any application under the National Health Service (Wales) Act 2006 s 83. New provision under the 2009 Act s 31 provides for the issuing by local health boards of notices to NHS contractors who have breached a term of arrangements for providing NHS pharmaceutical services or arrangements for providing general ophthalmic services and for the withholding by the boards of payments to such contractors. Changes introduced by s 32 enable local health boards to provide local pharmaceutical services in prescribed circumstances. An NHS foundation trust designated as a mental health foundation trust, where it appears to the regulator that it provides goods or services only or mainly for the prevention, diagnosis or treatment of any disorder or disability of the mind or for the benefit in any other way of people suffering from a disorder or disability of the mind, may be permitted to earn up to 105 per cent of its total income in each financial year from income derived from private charges: s 33. Section 34 removes the entitlement, for all persons aged 60 or over regardless of their income, to contribution to the cost of optical appliances. Section 35, Sch 5 confer power on the Commission for Local Administration in England to investigate complaints about privately arranged or funded adult social care and make consequential amendments. Information held by Her Majesty's Revenue and Customs for the purposes of functions relating to income tax may be disclosed by it to specified persons for the purposes of functions in connection with the analysis or dissemination of information relating to the income or expenses of dental practitioners or general medical practitioners: s 36.

#### ***Part 4 (ss 37-41) General***

Section 37 confers power on the Secretary of State to make transitional and consequential provision in relation to the coming into force of the Act. Section 38, Sch 6 provide for repeals and revocations. Section 39 deals with the extent of the Act, s 40 with commencement and s 41 with the short title.

#### ***Amendments, repeals and revocations***

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that the list is not exhaustive.

Specific provisions of a number of Acts are added, amended or repealed. These include: National Assistance Act 1948 s 24(6B); Local Government Act 1974 ss 34A-34T, Sch 5A; Licensing (Alcohol Education and Research Act) 1981 Sch 1 paras 3A, 3B, 4A; Mental Health Act 1983 s 117(2C); Human Fertilisation and Embryology Act 1990 Sch 1 paras 5A, 5B; Children and Young Persons (Protection from Tobacco) Act 1991 s 5A; Health Service Commissioners Act 1993 s 2B; Safeguarding Vulnerable Groups Act 2006 s 6(8C), (8D); Tobacco Advertising and Promotion Act 2002 ss 7A-7D; Human Tissue Act 2004 Sch 2 paras 9A-9C; National Health Service Act 2006 ss 12A-12D, 52A-52E, 65A-65Z3, 128A, 129(2A)-(2C), (3A), (4A), (10A), 150A, Sch 8 para 2A, Sch 19 para 5A; National Health Service (Wales) Act 2006 s 106A, Sch 10 para 2A, Sch 13 para 5A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(1) INTRODUCTION/(i) History of the Service/1. Introduction of the health service.

## 1. THE NATIONAL HEALTH SERVICE

### (1) INTRODUCTION

#### (i) History of the Service

##### 1. Introduction of the health service.

The introduction of a national health service available to all took place concurrently with the provision of a comprehensive social insurance scheme<sup>1</sup>. This scheme was based on recommendations made in the Beveridge Report<sup>2</sup>, which adopted three underlying assumptions, one of which was the provision of comprehensive health and rehabilitation services<sup>3</sup>.

Before 5 July 1948, when the National Health Service came into operation<sup>4</sup>, national health insurance facilities had been available to a large proportion of the population, with financial and medical treatment benefits depending on the record of contributions of the insured claimant and the rules of his particular society<sup>5</sup>. Institutional treatment was provided by voluntary hospitals, by hospitals provided by local authorities and by hospitals and institutions administered under the poor law<sup>6</sup>.

The inception of the National Health Service involved a nationalisation of voluntary and local authority hospitals by the vesting of the voluntary hospitals, their endowments for hospital purposes and their rights and liabilities in the Minister of Health, subject to exceptions in relation to the endowments and liabilities of teaching hospitals; and by the vesting of local authority hospitals and property in the minister<sup>7</sup>. Local health authorities were constituted, but the local health services were, in the main, only ancillary services<sup>8</sup>.

1 The National Insurance Scheme was administered by the Ministry of National Insurance, which was established for the purpose and with which the Ministry of Pensions was later combined, the name of the ministry being then changed to the Ministry of Pensions and National Insurance. That ministry and the Ministry of Health were merged to form the Department of Health and Social Security (see the Secretary of State for Social Services Order 1968, SI 1968/1699) and subsequently separated again with the formation of the Department of Health and the Department of Social Security in 1988 (see the Transfer of Functions (Health and Social Security Order) 1988, SI 1988/1843). The 'social security functions' (as defined) of the Department of Social Security were then transferred to the Department for Work and Pensions: see the Education and Skills and for Work and Pensions Order 2002, SI 2002/1397. As to national insurance see further **SOCIAL SECURITY AND PENSIONS**. As to the Secretary of State see PARA 6 note 8.

2 Ie the *Report on Social Insurance and Allied Services* (Cmd 6404) (1942).

3 The other assumptions were the provision of child allowances and the maintenance of employment: see the *Report on Social Insurance and Allied Services* (Cmd 6404) (1942), Pt 6.

4 See PARA 3.

5 The principal Acts under which health insurance was administered previously were the National Health Insurance Acts 1936 to 1941 (ie the National Health Insurance Act 1936, the National Health Insurance Act 1937, the National Health Insurance (Amendment) Act 1938, the National Health Insurance and Contributory Pensions (Emergency Provisions) Act 1939, and the National Health Insurance, Contributory Pensions and Workmen's Compensation Act 1941), which were repealed by the National Insurance Act 1946 s 65, Sch 9 (repealed).

6 Cf *A National Health Service* (Cmd 6502) (1944). The poor law was superseded by a system of national assistance on the same date, 5 July 1948, as that on which the National Health Service came into operation: see PARA 3.

7 As to the transfer to the minister see generally PARA 4.

8 As to health service bodies now see PARA 75 et seq.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(1) INTRODUCTION/(i) History of the Service/2. Related functions of authorities other than health authorities.

## 2. Related functions of authorities other than health authorities.

The advent of the National Health Service has not totally displaced the functions of local education authorities in relation to the medical welfare of pupils<sup>1</sup>. Mental illness is within the scope of the health service<sup>2</sup>, and the Secretary of State is the central authority for administering the mental health services<sup>3</sup>. Sheltered employment facilities for seriously disabled persons may be provided by the Secretary of State<sup>4</sup>. The domestic regulation of the medical profession as a whole<sup>5</sup> was not affected by the national health service legislation, and similarly the general regulation of the professions of dentists<sup>6</sup>, nurses and midwives<sup>7</sup>, opticians<sup>8</sup>, pharmacists<sup>9</sup>, osteopaths<sup>10</sup>, and chiropractors<sup>11</sup>, and of the health care professions<sup>12</sup>, is the subject of distinct legislation, although remuneration for work done for the health service and the disciplinary aspect of such work are governed by the National Health Service legislation<sup>13</sup>.

1 See **EDUCATION** vol 15(1) (2006 Reissue) PARA 548 et seq.

2 'Illness' in the National Health Service Act 1946 included mental illness: see s 79(1) (repealed). As to the meaning of 'illness' under the National Health Service Act 2006 see PARA 10 note 5.

3 See the National Health Service Act 2006 s 1(1); and PARA 10. See also **MENTAL HEALTH** vol 30(2) (Reissue) PARA 410. As to the Secretary of State see PARA 6 note 8.

4 See the Disabled Persons (Employment) Act 1944 s 15(1) (amended by the Disability Discrimination Act 1995 s 61(1), (2)); and **EMPLOYMENT** vol 39 (2009) PARA 538.

5 As to such regulation see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 1 et seq.

6 As to such regulation see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 385 et seq.

7 As to such regulation see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 691 et seq.

8 As to such regulation see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 803 et seq.

9 As to such regulation see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 880 et seq.

10 As to such regulation see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 499 et seq.

11 As to such regulation see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 591 et seq.

12 As to such regulation see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 291 et seq.

13 As to the provision of health services see PARA 241 et seq.

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### **3. Legislation.**

The original principal Act of the National Health Service legislation was the National Health Service Act 1946, which came fully into operation on 5 July 1948<sup>1</sup>. Consequential amendments were made to bring existing legislation into conformity with the National Health Service legislation<sup>2</sup>, and the Minister of Health was empowered to make alterations to, and to amend or repeal, local or private Acts or charters that contained provisions which appeared to him either to be inconsistent with the legislation or to be redundant in consequence of its passing<sup>3</sup>.

In the course of its existence the National Health Service has undergone numerous changes and been the subject of much legislation. The National Health Service Act 1977 consolidated certain provisions relating to the health service for England and Wales, and repealed certain enactments relating to the health service which had ceased to have any effect<sup>4</sup>. A further consolidation of enactments relating to the National Health Service was effected by the National Health Service Act 2006 which, together with the National Health Service (Wales) Act 2006, is now the principal legislation relating to the service in England and Wales<sup>5</sup>.

1 See the National Health Service Act 1946 s 79(1) (repealed); National Health Service Act (Appointed Day) Order 1948, SI 1948/112.

2 See the National Health Service Act 1946 s 76, Sch 10 (repealed).

3 National Health Service Act 1946 s 77(1) (repealed).

4 See the preamble to the National Health Service Act 1977.

5 As a result of this consolidation the National Health Service Act 1977 was repealed in its entirety and numerous other statutory provisions were either repealed, revoked or amended: see the National Health Service (Consequential Provisions) Act 2006 ss 2, 6, Schs 1, 4. As to the current legislation see PARA 6. Notwithstanding the repeal of the National Health Service Act 1977, the provisions of that Act relating to general ophthalmic services remain in force until such time as the law relating to primary ophthalmic services comes into force: see PARA 328 note 1.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(1) INTRODUCTION/(i) History of the Service/4. General transfer to the minister.

#### 4. General transfer to the minister.

On 5 July 1948<sup>1</sup> there were transferred to and vested in the Minister of Health:

- 1 (1) all interests in or attaching to premises forming part of a voluntary hospital<sup>2</sup> or used for the purposes of a voluntary hospital, and in equipment<sup>3</sup>, furniture or other movable property, being interests held immediately before 5 July 1948 by the governing body<sup>4</sup> or by trustees solely for the purposes of the hospital<sup>5</sup>, and all rights and liabilities to which the governing body or trustees were entitled or subject immediately before that day, being rights or liabilities acquired or incurred solely for the purpose of managing the premises or property or otherwise carrying on the business of the hospital<sup>6</sup>, but not including endowments<sup>7</sup>;
- 2 (2) all hospitals which were vested in a local authority<sup>8</sup> immediately before 5 July 1948, and all property and liabilities held by a local authority, or to which it was subject immediately before that day, being property and liabilities held or incurred solely for the purposes of any of those hospitals or for the purpose of securing accommodation for persons in the area at any hospital not vested in the authority<sup>9</sup>;
- 3 (3) all property held by the Dental Benefit Council or the Ophthalmic Benefit Approved Committee, together with all liabilities to which those bodies were subject immediately before 5 July 1948<sup>10</sup>; and
- 4 (4) all endowments of voluntary hospitals, not designated as teaching hospitals, held immediately before that date free of any trust existing immediately before then<sup>11</sup>.

The minister was required to establish a hospital endowments fund and to transfer the endowments to it<sup>12</sup>. He was enabled: (a) to control and manage the hospital endowments fund, and for that purpose to sell or otherwise dispose of its assets and to discharge expenses out of the assets<sup>13</sup>; and (b) to apply the assets of the hospital endowments fund in discharging liabilities transferred to him in connection with the transfer of voluntary hospitals, other than designated teaching hospitals<sup>14</sup>.

1 The date of the coming fully into force of the National Health Service Act 1946: see PARA 3.

2 As to the meaning of 'voluntary' and 'hospital' see National Health Service Act 1946 s 79(1) (repealed). Where in connection with a voluntary hospital any premises were used for providing accommodation for paying patients and profits thereby earned were available for the benefit of that hospital, the premises were deemed for the purposes of the transfer to form part of the hospital: s 9(2) (repealed). As to voluntary hospitals see also PARA 832 et seq.

3 'Equipment' included any machinery, apparatus or appliance, whether fixed or not, and any vehicle: National Health Service Act 1946 s 79(1) (repealed).

4 'Governing body' in relation to a voluntary hospital included any body, whether corporate or unincorporate, having the control and management of the hospital or any part of it, or otherwise carrying on the business of the hospital: National Health Service Act 1946 s 79(1) (repealed).

5 The words 'held by trustees solely for the purposes of that hospital' were to be construed as referring to the purposes for which the property or interests were in fact being held immediately before 5 July 1948: see *Minister of Health v Fox* [1950] Ch 369, [1950] 1 All ER 1050; *Re Marjoribanks' Trust Deed*, *Frankland v Ministry of Health* [1952] Ch 181, [1952] 1 All ER 191, CA; distinguished in *Cowan v Department of Health* [1992] Ch 286, [1991] 3 WLR 742. In relation to the transfer the following additional interests held solely for the purposes



of a hospital were deemed to be interests in premises forming part of a voluntary or, as the case may be, a local authority hospital: (1) interests in premises adapted and intended to be used for hospital purposes, but not so used before 5 July 1948; (2) interests in land on which the construction of hospital buildings had commenced before 5 July 1948; (3) interests in premises destroyed and not restored before 5 July 1948; and (4) interests in premises normally used for hospital purposes but not so used immediately before 5 July 1948: National Health Service Act 1946 s 9(3) (repealed).

6 Certain rights under the War Damage Act 1943 (repealed) held immediately before 5 July 1948 by the governing body or trustees of a voluntary hospital were deemed to be rights acquired solely for the purpose of carrying on the business of the hospital: see the National Health Service Act 1946 s 9(5) (repealed).

7 National Health Service Act 1946 s 6(1) (repealed). The reference to endowments was a reference to endowments within the meaning of s 7 (repealed), or any rights or liabilities transferred under it: s 6(1) (repealed). Endowments of voluntary hospitals, other than hospitals designated as teaching hospitals, were transferred to and vested in the minister on 5 July 1948, and endowments of teaching hospitals were on that day transferred to and vested in the boards of governors: see s 7 (repealed).

8 As to the meaning of 'local authority' for this purpose see National Health Service Act 1946 s 79(1) (repealed).

9 National Health Service Act 1946 s 6(2) (repealed). All property vested in the Secretary of State in consequence of the transfer of that property under the National Health Service Act 1946 s 6 is vested free of any trust existing immediately before that transfer: National Health Service Act 2006 s 219(1). The Secretary of State may use any such property for the purpose of any of his functions under the National Health Service Act 2006, but he must so far as practicable secure that the objects for which any such property was used immediately before that transfer are not prejudiced by the exercise of this power: s 219(2). 'Property' includes rights: s 275(1). As to the meaning of 'functions' see PARA 6 note 3. As to the Secretary of State see PARA 6 note 8. The Welsh Ministers may use any property which is vested in them, and to which the National Health Service Act 2006 s 219 applies, for the purpose of any of their functions under the National Health Service (Wales) Act 2006: s 166(1). But the Welsh Ministers must so far as practicable secure that the objects for which any such property was used immediately before the transfer mentioned in the National Health Service Act 2006 s 219(1) are not prejudiced by the exercise of such power: National Health Service (Wales) Act 2006 s 166(2). As to the meaning of 'the Welsh Ministers' see PARA 6 note 6. As to the National Health Service in Wales see PARA 74.

10 National Health Service (Transfer of Property and Liabilities of Insurance Committees, etc) Regulations 1948, SI 1948/1237, reg 5 (revoked). The Dental Benefit Council and the Ophthalmic Benefit Approved Committee were bodies formerly constituted under the National Health Insurance Act 1936 (repealed).

11 National Health Service Act 1946 s 7(4) (repealed). An exception was, however, made where an endowment subject to certain trusts was given between 6 November 1946 and 5 July 1948 either to the governing body of the hospital or to trustees; in such cases the endowment, instead of being transferred to the minister and the fund, was on 5 July 1948 transferred to and vested in the appropriate hospital management committee free of any existing trust: s 7(4) proviso (repealed).

12 National Health Service Act 1946 s 7(4) (repealed). The minister was required to transfer property corresponding to endowments held by local authority hospitals to a board of governors of a teaching hospital, a hospital management committee or to the hospital endowments fund, as appropriate: see s 7(11) (repealed). The minister and the board or committee had to secure, so far as was reasonably practicable, that the objects of the endowment and the observance of any conditions attaching to it were not prejudiced: see s 7(7) (repealed).

13 National Health Service (Control and Management of Hospital Endowment Fund) Regulations 1948, SI 1948/1489, reg 3 (revoked).

14 National Health Service Act 1946 s 7(5)(b) (repealed); National Health Service (Hospital Endowments Fund--Discharge of Liabilities) Regulations 1950, SI 1950/438, reg 2(1) (revoked).

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## **5. Other transfers; apportionments.**

On 5 July 1948 the property and liabilities of insurance committees were transferred to executive councils<sup>1</sup>. Where any voluntary hospital was before that date designated by the Minister of Health as a teaching hospital or was one of a group so designated, all endowments of the hospital held immediately before that day were on that day transferred to and vested in the board of governors constituted for the hospital<sup>2</sup>. Where a medical or dental school was associated with any hospital transferred to the Minister of Health, the property or liabilities held or incurred solely for the purposes of that school were not included in the transfer to the minister<sup>3</sup>. Instead all such property and liabilities were on 5 July 1948 transferred to the appropriate governing bodies and vested in those bodies<sup>4</sup>.

Detailed arrangements were made for the apportionment of transferred interests and endowments, for control and management pending apportionment and for the vesting and application of the apportioned property<sup>5</sup>. Notwithstanding subsequent repeals<sup>6</sup>, certain specified regulations and orders continued to have effect both for the purposes of the apportionment and transfer of property and the transfer and compensation of officers<sup>7</sup>.

1 See the National Health Service (Transfer of Property and Liabilities of Insurance Committees, etc) Regulations 1948, SI 1948/1237 (repealed).

2 National Health Service Act 1946 s 7(1) (repealed). As to endowments see PARA 4 note 7.

3 National Health Service Act 1946 s 8(1) (repealed). In this context the purposes of the school were accordingly not deemed to be the purposes of the hospital: s 8(1) (repealed).

4 National Health Service Act 1946 s 8(2) (repealed).

5 See National Health Service Act 1946 s 6 (repealed); and the National Health Service (Apportionment and Transfer) Regulations 1948, SI 1948/888 (repealed).

6 Repealed by the National Health Service Reorganisation Act 1973 s 57(2), Sch 5 (repealed).

7 See the National Health Service Reorganisation Act 1973 (Commencement No 3) Order 1974, SI 1974/188, art 6, Sch 2 (spent).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(1) INTRODUCTION/(ii) Present Organisation/6. Current legislation and its application.

## (ii) Present Organisation

### 6. Current legislation and its application.

The principal legislation in respect of the National Health Service is the National Health Service Act 2006 and the National Health Service (Wales) Act 2006<sup>1</sup>. Both these Acts extend to England and Wales only<sup>2</sup>. However, territorial limits are imposed in respect of the exercise of functions<sup>3</sup> under both Acts, so that the functions of a Minister of the Crown<sup>4</sup> under the National Health Service Act 2006 are exercisable only in relation to England<sup>5</sup> and the functions of the Welsh Ministers<sup>6</sup> under the National Health Service (Wales) Act 2006 are exercisable only in relation to Wales<sup>7</sup>. The Secretary of State<sup>8</sup> may by order provide that these Acts, in their application to the Isles of Scilly, have effect with such modifications as may be specified in the order<sup>9</sup>.

As to other legislation, the Health Act 2006 makes provision for the establishment of the Appointments Commission<sup>10</sup>, and the Health Protection Agency Act 2004 establishes the Health Protection Agency<sup>11</sup>. The NHS Redress Act 2006 makes provision for the establishment of a scheme for the purpose of enabling redress to be provided in relation to liability in tort in connection with services provided as part of the health service in England or Wales without the recourse to civil proceedings<sup>12</sup>. The Health and Social Care (Community Health and Standards) Act 2003 establishes the Commission for Healthcare Audit and Inspection with functions in relation to quality and standards in the National Health Service<sup>13</sup>, and also in relation to the registration of independent health services under the Care Standards Act 2000<sup>14</sup>. The Health and Social Care (Community Health and Standards) Act 2003 also contains provisions relating to complaints in respect of the National Health Service<sup>15</sup> and the recovery of NHS charges<sup>16</sup>. The Health Service Commissioners Act 1993 establishes the Health Service Commissioner for England<sup>17</sup>.

1 The structure of the two Acts is largely similar. The provisions of the National Health Service Act 2006 are covered in detail in this work but the provisions of the National Health Service (Wales) Act 2006 are not set out in detail. Where the provisions of the National Health Service Act 2006 are covered and there is equivalent provision in the National Health Service (Wales) Act 2006 reference is made in the footnotes to that equivalent provision.

2 National Health Service Act 2006 s 278(2); National Health Service (Wales) Act 2006 s 209(2). However, the National Health Service Act 2006 ss 261-266 which relate to the price of medical supplies (see PARAS 29-32) extend also to Scotland and Northern Ireland: s 278(3).

'England' means, subject to any alteration of boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 24), Greater London and the Isles of Scilly; Interpretation Act 1978 s 5, Sch 1. 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (consequential alteration of boundary following alteration of watercourse: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 90); Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9). As to local government areas see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq; and as to boundary changes see **LOCAL GOVERNMENT** vol 69 (2009) PARA 56 et seq. As to Greater London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29.

3 'Functions' includes powers and duties: National Health Service Act 2006 s 275(1); National Health Service (Wales) Act 2006 s 206(1).

4 'Minister of the Crown' includes the Treasury: National Health Service Act 2006 s 271(2). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 National Health Service Act 2006 s 271(1). However, s 271(1) does not apply in relation to: (1) s 8(1) (directions to health service bodies: see PARA 16) to such extent as it allows directions to be given in respect of matters concerning xenotransplantation, surrogacy agreements, embryology or human genetics; (2) Pt 2 Ch 5 (ss 30-65) (NHS foundation trusts: see PARA 174 et seq); (3) Pt 8 (ss 169-171) (the Family Health Services Appeal Authority: see PARAS 443, 448); (4) s 235 (superannuation of officers of certain hospitals: see PARA 523); (5) s 243 (Commission for Patient and Public Involvement in Health: see PARA 535); (6) s 251 (control of patient information: see PARA 54) and s 252 (Patient Information Advisory Group: see PARA 62); (7) Sch 21 (prohibition as to the sale of medical practices: see PARAS 273-276); (8) s 260 and Sch 22 (control of maximum price of medical supplies other than health service medicines: see PARAS 27, 28) and ss 261-266 (control of prices of medicines and profits: see PARAS 29-32); and (9) s 272(7), (8) (see PARA 9) to the extent that they apply in relation to a provision mentioned in any of heads (1) to (8) above: s 271(3).

6 'Welsh Ministers' means the First Minister and the Welsh Ministers appointed under the Government of Wales Act 2006 s 48: see s 45(2). As to the First Minister and the Welsh Ministers see the Government of Wales Act 2006 ss 46-48; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to devolved government in Wales generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 National Health Service (Wales) Act 2006 s 202.

8 In any enactment, 'Secretary of State' means one of Her Majesty's principal secretaries of state: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

9 National Health Service Act 2006 s 278(4); National Health Service (Wales) Act 2006 s 209(3). An order under s 209(3) has effect as if made under the National Health Service Act 2006 and accordingly, ss 272 and 273 (see PARA 9) of that Act apply to any such order: National Health Service (Wales) Act 2006 s 209(4). As to the making of orders see PARA 9. The National Health Service Act 2006 and the National Health Service (Wales) Act 2006 extend to the Isles of Scilly: Isles of Scilly (National Health Service) Order 1981, SI 1981/1473, reg 2(1). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the Isles of Scilly (National Health Service) Order 1981, SI 1981/1473, and the Isles of Scilly (Mental Health) Order 1985, SI 1985/149, have effect under the National Health Service Act 2006 s 278 and the National Health Service (Wales) Act 2006 s 209.

10 As to the Appointments Commission see PARA 805 et seq.

11 As to the Health Protection Agency Act see PARA 213 et seq.

12 As to the NHS Redress Act 2006 see PARA 695 et seq.

13 See further PARA 552 et seq.

14 See further PARA 748 et seq.

15 See further PARA 596 et seq.

16 See further PARA 486 et seq.

17 See further PARA 641 et seq.

## UPDATE

### 6-9 Present organisation

The Secretary of State has published a document entitled 'The NHS Constitution' ('the NHS Constitution'): Health Act 2009 s 1(1). The Secretary of State is required to (1) ensure continued availability of the NHS Constitution; (2) after an appropriate consultation with specified persons and bodies, to review the NHS Constitution at least every ten years; (3) revise and publish revisions of the NHS Constitution; and (4) publish a report every three years on how the NHS Constitution has affected patients, staff, carers and members of the public since the last report: see ss 3, 4, 6. Strategic health authorities, primary care trusts, NHS trusts, special health authorities, NHS foundation trusts, the Independent Regulator of NHS Foundation Trusts and the Care Quality Commission must, in performing their NHS functions, have regard to the NHS

Constitution, as must certain other persons providing or assisting in the provision of NHS services: see s 2.

The Secretary of State has also published a document entitled 'The Handbook of the NHS Constitution' ('the Handbook'): s 1(2). The Secretary of State is required to ensure continued availability of the Handbook and to review it at least every three years: s 5.

Any revision of the guiding principles of the NHS Constitution as a result of the ten-year review under s 3 or any revision of the NHS Constitution under s 4 may only be made in accordance with regulations made by statutory instrument by the Secretary of State: s 7.

## **6 Current legislation and its application**

NOTE 5--National Health Service Act 2006 s 271(3) amended: Local Government and Public Involvement in Health Act 2007 Sch 18 Pt 18; Health and Social Care Act 2008 Sch 14 para 5.

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## 7. Delegation of functions.

The Secretary of State<sup>1</sup> may direct<sup>2</sup> a strategic health authority<sup>3</sup>, a primary care trust<sup>4</sup> or a special health authority<sup>5</sup> to exercise any of his functions<sup>6</sup> relating to the health service<sup>7</sup> which are specified in the directions<sup>8</sup>. The Secretary of State may also direct a special health authority to exercise any functions of a strategic health authority or a primary care trust which are specified in the directions<sup>9</sup>. The functions which may be specified in directions include functions under enactments<sup>10</sup> relating to mental health and care homes<sup>11</sup>. Except in prescribed<sup>12</sup> cases, such directions must not preclude a person or body by whom the function is exercisable apart from the directions from exercising the function<sup>13</sup>.

In practice day to day decision-making in the national health service is delegated to strategic health authorities and primary care trusts<sup>14</sup>. The effect of such delegation is to transfer the powers delegated to the body in question and, subject to any powers expressly or impliedly reserved to him, to divest the Secretary of State of the ability to exercise those powers until the delegation is revoked<sup>15</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 A direction by the Secretary of State under the National Health Service Act 2006 s 7 must be given, in the case of a direction about a function under s 4 (see PARA 12), s 197 (see PARA 42) or s 198 (see PARA 43) by regulations; and in the case of any other direction by regulations or an instrument in writing: see s 273(4)(b), (c). The power to give directions includes the power to vary or revoke such directions by subsequent directions: see s 273(1). 'Regulations' means regulations made by the Secretary of State: s 275(1). 'Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly: Interpretation Act 1978 s 5, Sch 1. As to the making of regulations and directions generally see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 7: the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375; see PARAS 89-93, 106, 127.

3 As to strategic health authorities see PARA 94 et seq.

4 As to primary care trusts see PARA 111 et seq.

5 As to special health authorities see PARA 136.

6 As to the meaning of 'functions' see PARA 6 note 3.

7 As to the meaning of 'health service' see PARA 10 note 3.

8 National Health Service Act 2006 s 7(1). Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a strategic health authority, primary care trust or special health authority of any function exercisable by it by virtue of s 7 are enforceable by or against that body (and no other body): see Sch 2 para 16, Sch 3 para 16, Sch 6 para 12. The National Health Service Act 2006 has effect as if the following services were provided as a result of the delegation by the Secretary of State of his functions by directions given under s 7: (1) primary medical services provided under an agreement under s 92 (see s 92(6); and PARA 267); (2) primary dental services provided under an agreement under s 107 (see s 107(6); and PARA 288); (3) local pharmaceutical services provided under a pilot scheme (see s 141; and PARA 419); (4) functions exercisable by a special health authority by virtue of a direction given by the Secretary of State under the Care Standards Act 2000 s 67A (see s 67A(2) (added by the Health Act 2006 s 72)); and **SOCIAL SERVICES AND COMMUNITY CARE**.

9 National Health Service Act 2006 s 7(2). See also note 2.

10 As to the meaning of 'enactment' see PARA 10 note 7.

11 National Health Service Act 2006 s 7(3). As to the law relating to mental health see **MENTAL HEALTH**. As to care homes see **SOCIAL SERVICES AND COMMUNITY CARE**.

12 'Prescribed' means prescribed by regulations made by the Secretary of State: National Health Service Act 2006 s 275(1).

13 National Health Service Act 2006 s 73(1), (2).

14 See the regulations referred to in note 2.

15 See *Blackpool Corpn v Locker* [1948] 1 KB 349 at 377-378, [1948] 1 All ER 85 at 96, CA, per Scott LJ; *Department for Environment Food & Rural Affairs v Robertson* [2004] ICR 1289, [2003] All ER (D) 192 (Dec), EAT (revsd on other grounds sub nom *Robertson v Department for Environment Food and Rural Affairs* [2005] EWCA Civ 138, [2005] ICR 750, [2005] IRLR 363) in which the court gave detailed consideration to *Blackpool Corpn v Locker* and the cases cited below and to academic works. However, the position does not seem to be finally settled: see *Huth v Clarke* (1890) 25 QBD 391; *Gordon, Dadds & Co v Morris* [1945] 2 All ER 616, sub nom *Gordon, Dadds & Co v Minister of Health* 110 JP 119; *Lewisham Metropolitan Borough and Town Clerk v Roberts* [1949] 2 KB 608, [1949] 1 All ER 815, CA; *Manton v Brighton Corpn* [1951] 2 KB 393, [1951] 2 All ER 101; *Winder v Cambridgeshire County Council* (1978) 76 LGR 549, CA. See also **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 31.

## UPDATE

### 6-9 Present organisation

The Secretary of State has published a document entitled 'The NHS Constitution' ('the NHS Constitution'): Health Act 2009 s 1(1). The Secretary of State is required to (1) ensure continued availability of the NHS Constitution; (2) after an appropriate consultation with specified persons and bodies, to review the NHS Constitution at least every ten years; (3) revise and publish revisions of the NHS Constitution; and (4) publish a report every three years on how the NHS Constitution has affected patients, staff, carers and members of the public since the last report: see ss 3, 4, 6. Strategic health authorities, primary care trusts, NHS trusts, special health authorities, NHS foundation trusts, the Independent Regulator of NHS Foundation Trusts and the Care Quality Commission must, in performing their NHS functions, have regard to the NHS Constitution, as must certain other persons providing or assisting in the provision of NHS services: see s 2.

The Secretary of State has also published a document entitled 'The Handbook of the NHS Constitution' ('the Handbook'): s 1(2). The Secretary of State is required to ensure continued availability of the Handbook and to review it at least every three years: s 5.

Any revision of the guiding principles of the NHS Constitution as a result of the ten-year review under s 3 or any revision of the NHS Constitution under s 4 may only be made in accordance with regulations made by statutory instrument by the Secretary of State: s 7.

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## **8. Powers of intervention.**

If the Secretary of State<sup>1</sup> considers that an NHS body<sup>2</sup>, other than an NHS foundation trust, is not performing one or more of its functions<sup>3</sup> adequately or at all, or that there are significant failings in the way the body is being run, and is satisfied that it is appropriate for him to intervene, he may make an intervention order<sup>4</sup>. An intervention order may provide for the removal from office or suspension of some or all members of the body concerned, and may set out directions to that body as to the exercise of its functions<sup>5</sup>.

The Secretary of State also has power, if he considers that an NHS body, other than an NHS foundation trust, has failed to carry out any of its functions, or has in carrying out those functions failed to comply with any regulations or directions relating to those functions, to make an order declaring it to be in default, as a consequence of which all members of the body concerned must immediately vacate office and new members must be appointed<sup>6</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 In the National Health Service Act 2006 (apart from in Sch 15: see PARA 518 note 1) 'NHS body' means a strategic health authority, a primary care trust, an NHS trust, a special health authority, an NHS foundation trust, and a local health board: s 28(6). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111 et seq. As to NHS trusts see PARA 155. As to special health authorities see PARA 136. As to NHS foundation trusts see PARA 174. As to the meaning of 'local health board' see PARA 17 note 13.

3 As to the meaning of 'functions' see PARA 6 note 3.

4 See the National Health Service Act 2006 s 66; and PARA 79.

5 See the National Health Service Act 2006 s 67; and PARA 79.

6 See the National Health Service Act 2006 s 68; and PARA 80.

## **UPDATE**

### **6-9 Present organisation**

The Secretary of State has published a document entitled 'The NHS Constitution' ('the NHS Constitution'): Health Act 2009 s 1(1). The Secretary of State is required to (1) ensure continued availability of the NHS Constitution; (2) after an appropriate consultation with specified persons and bodies, to review the NHS Constitution at least every ten years; (3) revise and publish revisions of the NHS Constitution; and (4) publish a report every three years on how the NHS Constitution has affected patients, staff, carers and members of the public since the last report: see ss 3, 4, 6. Strategic health authorities, primary care trusts, NHS trusts, special health authorities, NHS foundation trusts, the Independent Regulator of NHS Foundation Trusts and the Care Quality Commission must, in performing their NHS functions, have regard to the NHS Constitution, as must certain other persons providing or assisting in the provision of NHS services: see s 2.

The Secretary of State has also published a document entitled 'The Handbook of the NHS Constitution' ('the Handbook'): s 1(2). The Secretary of State is required to ensure continued availability of the Handbook and to review it at least every three years: s 5.



Any revision of the guiding principles of the NHS Constitution as a result of the ten-year review under s 3 or any revision of the NHS Constitution under s 4 may only be made in accordance with regulations made by statutory instrument by the Secretary of State: s 7.

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## 9. Orders, regulations, rules and directions.

Any power under the National Health Service Act 2006<sup>1</sup> to make an order, rules or regulations<sup>2</sup> is exercisable by statutory instrument<sup>3</sup>. A statutory instrument made by virtue of the Act is subject to annulment in pursuance of a resolution of either House of Parliament<sup>4</sup>.

Any power<sup>5</sup> under the Act to make orders, rules, regulations or schemes, and any power to give directions may be exercised: (1) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case<sup>6</sup>; (2) so as to make, as respects the cases in relation to which it is exercised (a) the full provision to which the power extends or any less provision (whether by way of exception or otherwise)<sup>7</sup>, (b) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of the Act<sup>8</sup>, (c) any such provision either unconditionally or subject to any specified condition<sup>9</sup>; and (3) may, in particular, except where the power is a power to make rules, make different provision for different areas<sup>10</sup>. Any such power includes power: (i) to make such incidental, supplementary, consequential, saving or transitional provision (including, in the case of a power to make an order or regulations, provision amending, repealing or revoking enactments) as the person<sup>11</sup> or body exercising the power considers to be expedient<sup>12</sup>; (ii) and to provide for a person to exercise a discretion in dealing with any matter<sup>13</sup>.

Regulations may provide for prescribing the forms and manner of service of notices and other documents<sup>14</sup>, prescribing the manner in which documents may be executed or proved<sup>15</sup>, and exempting judges and justices of the peace from disqualification by their liability to rates<sup>16</sup>.

Where under or by virtue of any provision of the Act an order may be made<sup>17</sup>, or directions may be given<sup>18</sup>, that provision includes power to vary or revoke the order or directions by subsequent order or by subsequent directions<sup>19</sup>. A direction by a strategic health authority<sup>20</sup> must be given by an instrument in writing<sup>21</sup>. With certain exceptions, a direction by the Secretary of State must also be given by an instrument in writing<sup>22</sup>.

1 The National Health Service Act 2006 s 272 does not apply to Pt 2 Ch 5 (ss 30-65) (as to which see s 64; and PARA 187), and Pt 10 (ss 195-210) (as to which see s 209; and PARAS 41, 44): s 272(1). As to the equivalent provision to the National Health Service Act 2006 ss 272-274 in relation to Wales see the National Health Service (Wales) Act 2006 ss 203-205.

2 As to the meaning of 'regulations' see PARA 7 note 2.

3 National Health Service Act 2006 s 272(2). Section 272(2) does not apply to an order under s 66(2) (see PARA 79), s 95(1) (see PARA 269), s 110(1) (see PARA 290), s 211(4) (see PARA 24), Sch 3 para 22 (see PARA 128), Sch 3 para 23 (see PARA 124), Sch 3 para 24 or 26 (see PARA 125), Sch 4 para 9 (see PARA 165), Sch 4 para 27 (see PARA 171), Sch 4 para 29 (see PARA 167), or Sch 18 para 2 (see PARA 233): s 272(3). As to statutory instruments generally see **STATUTES** vol 44(1) (Reissue) PARA 1501 et seq.

4 National Health Service Act 2006 s 272(4). Section 272(4) does not apply to a statutory instrument containing a PCT order (see PARA 111), or an order under s 25 (see PARA 155), Sch 4 (see PARA 155) or Sch 5 para 1(1) (see PARA 513): s 272(5). A statutory instrument containing regulations under s 251 (see PARA 54), except where they are made by virtue of s 251(5)(b), an order under s 265(10) (see PARA 32), or an order under s 193(4) (see PARA 484), may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament: s 272(6). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

- 5 The National Health Service Act 2006 s 272(7) and (8) (see the text to notes 11-13) do not apply to an order under s 260 (see PARA 27) (but this does not affect s 260(1)): s 272(9).
- 6 National Health Service Act 2006 s 272(7)(a).
- 7 National Health Service Act 2006 s 272(7)(b)(i).
- 8 National Health Service Act 2006 s 272(7)(b)(ii).
- 9 National Health Service Act 2006 s 272(7)(b)(iii).
- 10 National Health Service Act 2006 s 272(7)(c).
- 11 As to the meaning of 'person' see PARA 17 note 2.
- 12 National Health Service Act 2006 s 272(8)(a). See also note 5.
- 13 National Health Service Act 2006 s 272(8)(b). See also note 5.
- 14 National Health Service Act 2006 s 274(a).
- 15 National Health Service Act 2006 s 274(b).
- 16 National Health Service Act 2006 s 274(c). As to disqualification for acting as a justice of the peace generally see **MAGISTRATES** vol 29(2) (Reissue) par 550 et seq.
- 17 National Health Service Act 2006 s 273(1)(a).
- 18 National Health Service Act 2006 s 273(1)(b).
- 19 National Health Service Act 2006 s 273(1). Section 273(1) does not affect the Interpretation Act 1978 s 14(b) (see **STATUTES** vol 44(1) (Reissue) PARA 1526): National Health Service Act 2006 s 273(2).
- 20 As to strategic health authorities see PARA 94 et seq. As to directions by strategic health authorities see PARA 107.
- 21 National Health Service Act 2006 s 273(3). As to the meaning of 'writing' see PARA 7 note 2.
- 22 National Health Service Act 2006 s 273(4)(a). In the case of a direction under s 7 (see PARA 7) about a function under s 4, 197 or 198, or a direction under s 199(2) (see PARA 44), the direction must be given by regulations: see s 273(4)(b). In the case of any other direction under s 7, or a direction under s 8 (see PARA 16), s 15 (see PARA 107), s 87 (see PARA 244), s 94(4) (see PARA 268), s 103 (see PARA 280), s 109(4) (see PARA 289), s 120 (see PARA 332) or s 169(3) (see PARA 443), the direction must be given by regulations or an instrument in writing: see s 273(4)(c). Section 273(4) does not apply to a direction under s 88 (see PARA 245) (as to which, see that section): s 273(5). As to what constitutes a direction see *R v Secretary of State for Health, ex p Manchester Local Medical Committee* (1995) 25 BMLR 77.

## UPDATE

### 6-9 Present organisation

The Secretary of State has published a document entitled 'The NHS Constitution' ('the NHS Constitution'): Health Act 2009 s 1(1). The Secretary of State is required to (1) ensure continued availability of the NHS Constitution; (2) after an appropriate consultation with specified persons and bodies, to review the NHS Constitution at least every ten years; (3) revise and publish revisions of the NHS Constitution; and (4) publish a report every three years on how the NHS Constitution has affected patients, staff, carers and members of the public since the last report: see ss 3, 4, 6. Strategic health authorities, primary care trusts, NHS trusts, special health authorities, NHS foundation trusts, the Independent Regulator of NHS Foundation Trusts and the Care Quality Commission must, in performing their NHS functions, have regard to the NHS Constitution, as must certain other persons providing or assisting in the provision of NHS services: see s 2.

The Secretary of State has also published a document entitled 'The Handbook of the NHS Constitution' ('the Handbook'): s 1(2). The Secretary of State is required to ensure continued availability of the Handbook and to review it at least every three years: s 5.

Any revision of the guiding principles of the NHS Constitution as a result of the ten-year review under s 3 or any revision of the NHS Constitution under s 4 may only be made in accordance with regulations made by statutory instrument by the Secretary of State: s 7.

## **9 Orders, regulations, rules and directions**

NOTE 4--National Health Service Act 2006 s 272(4)-(6) amended, s 272(6A) added: Health Act 2009 s 18(8), Sch 1 para 10.

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## **(2) ADMINISTRATION**

### **(i) England**

#### **A. GENERAL FUNCTIONS OF THE SECRETARY OF STATE**

##### **(A) POWERS AND DUTIES TO PROVIDE CLINICAL SERVICES**

###### **10. Duty to promote the health service.**

The Secretary of State<sup>1</sup> must continue the promotion in England<sup>2</sup> of a comprehensive health service<sup>3</sup> designed to secure improvement in the physical and mental health of the people of England<sup>4</sup>, and in the prevention, diagnosis and treatment of illness<sup>5</sup>. The Secretary of State must for that purpose provide or secure the provision of services in accordance with the National Health Service Act 2006<sup>6</sup>. The services so provided must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment<sup>7</sup>, whenever passed<sup>8</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the delegation of these functions to strategic health authorities see PARA 89.

2 As to the meaning of 'England' see PARA 6 note 2. As to the promotion of the health service in Wales see PARA 74. As to the application of the National Health Service legislation to the Isles of Scilly see PARA 6. As to the introduction of the National Health Service see PARA 1 et seq. As to patients' right to treatment abroad see PARA 13. As to the right of European Union providers to offer NHS treatment in the United Kingdom see PARA 14.

3 'Health service' means the health service continued under the National Health Service Act 2006 s 1(1) and under the National Health Service (Wales) Act 2006 s 1(1) (see PARA 74): National Health Service Act 2006 s 275(1).

4 National Health Service Act 2006 s 1(1)(a).

5 National Health Service Act 2006 s 1(1)(b). 'Illness' includes mental disorder within the meaning of the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402) and any injury or disability requiring medical or dental treatment or nursing: National Health Service Act 2006 s 275(1). As from a day to be appointed this definition is amended to read: 'illness' includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing: s 275(1) (definition prospectively amended by the Mental Health Act 2007 s 1(4), Sch 1 Pt 2 para 24). At the date at which this volume states the law no such day had been appointed. 'Medical' includes surgical: National Health Service Act 2006 s 275(1). 'Illness' does not include blindness: *Jewish Blind Society Trustees v Henning (Valuation Officer)* [1961] 1 All ER 47, [1961] 1 WLR 24, CA (although the basis for the application of that decision in the rating context in which it was given was overruled by the Rating (Disabled Persons) Act 1978 s 2(2)(c) (repealed)). 'Treatment' includes not only medical treatment by doctors but also nursing: see *Minister of Health v Royal Midlands Counties Home for Incurables at Leamington Spa* [1954] Ch 530, [1954] 1 All ER 1013, CA. As to the general power of the Secretary of State to provide services see the National Health Service Act 2006 s 2; and PARA 11. As to the duty of the Secretary of State to provide certain services see the National Health Service Act 2006 s 3; and PARA 12.

6 National Health Service Act 2006 s 1(2).

7 'Enactment' does not include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament: Interpretation Act 1978 s 5, Sch 1. As to the Scottish Parliament see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

8 National Health Service Act 2006 s 1(3). As to charges for services see PARA 469 et seq. A failed asylum seeker may be ordinarily resident in Great Britain and therefore entitled to treatment free of charge: see *R (on the application of A) v West Middlesex University Hospital NHS Trust* [2008] EWHC 855 (Admin), [2008] All ER (D) 335 (Apr).

## **UPDATE**

### **10 Duty to promote the health service**

TEXT AND NOTES--The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of health services which must or may be provided for the purposes of the health service continued under the National Health Service Act 2006 s 1(1) or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

NOTE 5--Day appointed is 3 November 2008: SI 2008/1900.

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## **11. General power to provide services.**

The Secretary of State<sup>1</sup> may: (1) provide such services as he considers appropriate for the purpose of discharging any duty imposed on him by the National Health Service Act 2006<sup>2</sup>; and (2) do anything else which is calculated to facilitate, or is conducive or incidental to, the discharge of such a duty<sup>3</sup>. This provision does not affect the Secretary of State's other powers<sup>4</sup>, or the provisions<sup>5</sup> relating to pharmaceutical services<sup>6</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 s 2 in relation to Wales see the National Health Service (Wales) Act 2006 s 2.

2 National Health Service Act 2006 s 2(1)(a).

3 National Health Service Act 2006 s 2(1)(b). As to the powers of the Secretary of State under this provision in relation to the protection of the NHS from fraud and other unlawful activities see PARA 41 et seq.

4 National Health Service Act 2006 s 2(2)(a). The Secretary of State's other powers are those apart from s 2: see s 2(2)(a).

5 In the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133): see PARA 339 et seq.

6 National Health Service Act 2006 s 2(2)(b).

## **UPDATE**

### **11-12 General power to provide services; duty to provide certain services**

The Secretary of State may make direct payments to a patient or his nominee for the purpose of securing the provision of services under the National Health Service Act 2006 s 2(1) or 3(1): see the National Health Service Act 2006 ss 12A-12D (added by the Health Act 2009 s 11); and PARA 12A.

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## **12. Duty to provide certain services.**

The Secretary of State<sup>1</sup> must provide throughout England<sup>2</sup>, to such extent as he considers necessary to meet all reasonable requirements<sup>3</sup>: (1) hospital accommodation<sup>4</sup>; (2) other accommodation for the purpose of any service provided under the National Health Service Act 2006<sup>5</sup>; (3) medical, dental, ophthalmic, nursing and ambulance services<sup>6</sup>; (4) such other services or facilities<sup>7</sup> for the care of pregnant women, women who are breastfeeding and young children as he considers are appropriate as part of the health service<sup>8</sup>; (5) such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as he considers are appropriate as part of the health service<sup>9</sup>; (6) such other services or facilities as are required for the diagnosis and treatment of illness<sup>10</sup>.

The Secretary of State's duty to promote the health service<sup>11</sup> includes a duty to provide hospital accommodation and services for persons who are liable to be detained under the Mental Health Act 1983<sup>12</sup>, and in the opinion of the Secretary of State require treatment under conditions of high security on account of their dangerous, violent or criminal propensities<sup>13</sup>. Such hospital accommodation and services are known as 'high security psychiatric services'<sup>14</sup> and may be provided only at hospital premises<sup>15</sup> at which services are provided only for such persons<sup>16</sup>.

In carrying out his duty to provide specific services<sup>17</sup> under the National Health Service Act 2006, the Secretary of State may exercise a degree of judgment as to the circumstances in which he will provide the services specified. He does not automatically have to meet all requirements and in certain circumstances he can exercise his judgment and legitimately decline to provide services. When exercising his judgment, he has to bear in mind the comprehensive service which he is under a duty to promote<sup>18</sup>, but, as long as he pays due regard to that duty, the fact that the service will not be comprehensive does not mean that he is necessarily contravening either that general duty or his duty to provide specific services. A comprehensive health service may never, for human, financial and other resource reasons, be achievable and, in exercising his judgment, the Secretary of State is entitled to take into account the resources available to him and the demands on those resources, and to have regard to the resources made available to him under current government economic policy<sup>19</sup>. Virtually all cases challenging decisions as to the provision of services and treatment are brought by way of judicial review alleging that the manner in which the decision has been reached is in some way defective when judged against judicially accepted principles<sup>20</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the duty of the Secretary of State to promote a comprehensive health service in England see PARA 10. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89.

2 As to the meaning of 'England' see PARA 6 note 2. As to the equivalent provisions to the National Health Service Act 2006 ss 3, 4 in relation to Wales see the National Health Service (Wales) Act 2006 ss 3, 4.

3 For the purposes of the duty in the National Health Service Act 2006 s 3(1), services provided under: (1) s 83(2) (primary medical services: see PARA 241), s 99(2) (primary dental services: see PARA 277) or s 115(4) (primary ophthalmic services: see PARA 328); or (2) a general medical services contract (see PARA 242), a general dental services contract (see PARA 278) or a general ophthalmic services contract (see PARA 330), must be regarded as provided by the Secretary of State: s 3(2). Section 3 does not affect Pt 7 Ch 1 (ss 126-133) (pharmaceutical services: see PARA 339 et seq): s 3(3). As to references to general ophthalmic services



contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.

4 National Health Service Act 2006 s 3(1)(a). 'Hospital' means: (1) any institution for the reception and treatment of persons suffering from illness; (2) any maternity home; and (3) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution; and 'hospital accommodation' must be construed accordingly: s 275(1). As to the meanings of 'illness' and 'medical' see PARA 10 note 5. A private nursing home registered both as a nursing home and as a residential care home may be a hospital within this definition: see *White v Chief Adjudication Officer* (1993) 17 BMLR 68, CA. Where any hospital provided by the Secretary of State in accordance with the National Health Service Act 2006 was a voluntary hospital transferred by virtue of the National Health Service Act 1946 (see PARA 4), and the character and associations of that hospital before its transfer were such as to link it with a particular religious denomination, regard must be had in the general administration of the hospital to the preservation of that character and those associations: National Health Service Act 2006 s 221(1), (2). As to the equivalent provision to s 221 in relation to Wales see the National Health Service (Wales) Act 2006 s 168.

5 National Health Service Act 2006 s 3(1)(b).

6 National Health Service Act 2006 s 3(1)(c). As to medical services see PARA 241 et seq; as to dental services see PARA 277 et seq; and as to ophthalmic services see PARA 295 et seq. As to the provision of nursing services see *R v North and East Devon Health Authority, ex p Coughlan (Secretary of State for Health and another intervening)* [2001] QB 213, [2000] 3 All ER 850, CA. As to the lawfulness of guidance issued by the Department of Health concerning the employment in the NHS of doctors from countries outside the United Kingdom and the European Economic Area see *R (on the application of Bapio Action Ltd) v Secretary of State for the Home Department* [2008] UKHL 27, [2008] All ER (D) 410 (Apr).

7 'Facilities' includes the provision of (or the use of) premises, goods, materials, vehicles, plant or apparatus: National Health Service Act 2006 s 275(1). 'Goods' include accommodation: s 275(1). As to the meaning of 'facilities' see further *R (on the application of Keating) v Cardiff Local Health Board (Secretary of State for Health intervening)* [2005] EWCA Civ 847, [2005] 3 All ER 1000, (2005) 85 BMLR 190.

8 National Health Service Act 2006 s 3(1)(d). As to the meaning of 'health service' see PARA 10 note 3.

9 National Health Service Act 2006 s 3(1)(e). A project designed to enable people who suffered from mental health difficulties to call on specialist support to help them obtain the welfare benefits to which they were entitled can be funded under this provision: *R (on the application of Keating) v Cardiff Local Health Board (Secretary of State for Health, intervening)* [2005] EWCA Civ 847, [2005] 3 All ER 1000, (2005) 85 BMLR 190. If the predominant purpose for the supply of accommodation to a person receiving care or after-care as a result of illness is the provision of a residence for him, it is not supplied for the purpose of the care or after-care: *Vandyk v Oliver (Valuation Officer)* [1976] AC 659, [1976] 1 All ER 466, HL.

10 National Health Service Act 2006 s 3(1)(f). As to the power of the Secretary of State to supply goods and services see ss 80, 81; and PARA 237.

11 In his duty under the National Health Service Act 2006 s 1: see PARA 10.

12 National Health Service Act 2006 s 4(1)(a). As to the detention of persons under the Mental Health Act 1983 see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 460 et seq.

13 National Health Service Act 2006 s 4(1)(b).

14 See the National Health Service Act 2006 s 4(2).

15 'Hospital premises' means a hospital, or any part of a hospital which is treated as a separate unit: National Health Service Act 2006 s 4(4).

16 National Health Service Act 2006 s 4(3). As to the admission of patients to hospitals providing high security psychiatric services see the Mental Health Act 1983 s 123; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 419.

17 In his duty under the National Health Service Act 2006 s 3: see the text to notes 1-10.

18 In under the National Health Service Act 2006 s 1: see PARA 10.

19 *R v Secretary of State for Social Services, ex p Hincks* (1980) 1 BMLR 93, CA; *R v North and East Devon Health Authority, ex p Coughlan (Secretary of State for Health and another intervening)* [2001] QB 213, [2000] 3 All ER 850, CA.

20 Judicial review is concerned with reviewing not the merits of the decision in question, but the decision making process itself: *Chief Constable of the North Wales Police v Evans* [1982] 3 All ER 141 at 154, [1982] 1 WLR 1155 at 1173, HL, per Lord Brightman. As to judicial review see **CIVIL PROCEDURE** vol 12 (2009) PARA 1530; **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq. As to cases relating to the provision of services or treatment see further: *R v Central Birmingham Health Authority, ex p Walker, R v Secretary of State for Social Services, ex p Walker* (1987) 3 BMLR 32, CA; *R v Cambridge Health Authority, ex p B* [1995] 2 All ER 129, [1995] 2 FCR 485, CA; *R v North West Lancashire Health Authority, ex p A* [2000] 1 WLR 977, [2000] 2 FCR 525, CA; *R (on the application of Pfizer Ltd) v Secretary of State for Health* [2002] EWCA Civ 1566, [2003] 1 CMLR 642, (2002) 70 BMLR 219; *R (on the application of Longstaff) v Newcastle NHS Primary Care Trust* [2003] EWHC 3252 (Admin), (2004) Times, 15 January, [2003] All ER (D) 132 (Dec); *R (on the application of Rogers) v Swindon NHS Primary Care Trust* [2006] EWCA Civ 392, [2006] 1 WLR 2649, 89 BMLR 211; *R (on the application of Otley) v Barking and Dagenham NHS Primary Care Trust* [2007] EWHC 1927 (Admin), 98 BMLR 182. As to the operation of a scheme for the appointment of junior doctors to positions for post graduate medical training see *R (on the application of Legal Remedy UK Ltd) v Secretary of State for Health* [2007] EWHC 1252 (Admin), 96 BMLR 191. As to the requirement for the consent of patients to treatment, the treatment of mentally incompetent patients, the treatment of children, and the withdrawal of life-prolonging treatment, see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 198-202.

## UPDATE

### 11-12 General power to provide services; duty to provide certain services

The Secretary of State may make direct payments to a patient or his nominee for the purpose of securing the provision of services under the National Health Service Act 2006 s 2(1) or 3(1): see the National Health Service Act 2006 ss 12A-12D (added by the Health Act 2009 s 11); and PARA 12A.

### 12 Duty to provide certain services

NOTE 6--See also *R (on the application of Green) v South West Strategic Health Authority* [2008] EWHC 2576 (Admin), [2009] PTSR (CS) 5, [2008] All ER (D) 21 (Nov).

NOTE 9--As to provision by the Secretary of State on meeting the needs of adults with autistic spectrum conditions, see the Autism Act 2009; and PARA 40A.

NOTE 12--See *R (on the application of Ross) v West Sussex Primary Care Trust* [2008] EWHC 2252 (Admin), (2008) 106 BMLR 1 (decision to refuse funding for treatment on ground of lack of exceptionality logically flawed because it required patient to show that his case was unique); *R (on the application of AC) v Berkshire West Primary Care Trust* [2010] EWHC 1162 (Admin), [2010] All ER (D) 229 (May) (refusal to fund breast augmentation surgery for transsexual).

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### **12A. Direct payments.**

The Secretary of State may, for the purpose of securing the provision to a patient of (1) anything that the Secretary of State may or must provide under the National Health Service Act 2006 s 2(1) or 3(1); (2) anything for which the Secretary of State must arrange under Sch 1 para 8; (3) vehicles that the Secretary of State may provide under Sch 1 para 9, make payments ('direct payments'), with the patient's consent, to the patient or to a person nominated by the patient: National Health Service Act 2006 s 12A(1), (2), (5) (ss 12A-12D added by the Health Act 2009 s 11). The Secretary of State's power to make direct payments is subject to any provision made by regulations under the National Health Service Act 2006 s 12B: see National Health Service Act 2006 ss 12A(3), 12B. A direct payment may be made only in accordance with a pilot scheme under regulations made by virtue of s 12C: National Health Service Act 2006 ss 12A(6), 12C. As to regulations made under ss 12A-12C, see the National Health Service (Direct Payments) Regulations 2010, SI 2010/1000. The Secretary of State may arrange with any person or body to give assistance in connection with direct payments: National Health Service Act 2006 s 12D.

### **UPDATE**

#### **11-12 General power to provide services; duty to provide certain services**

The Secretary of State may make direct payments to a patient or his nominee for the purpose of securing the provision of services under the National Health Service Act 2006 s 2(1) or 3(1): see the National Health Service Act 2006 ss 12A-12D (added by the Health Act 2009 s 11); and PARA 12A.

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### **13. Patients' right to treatment abroad.**

There is a general right for a person who is ordinarily resident in a member state<sup>1</sup> of the European Union to receive medical treatment in another member state at the expense of the health service in his home state, but this right may be made subject to prior approval by a competent institution in the home state<sup>2</sup>. A person who is ordinarily resident in a member state and who is entitled to treatment under the national health service of that member state, may go to the territory of another member state to receive there the treatment appropriate to his condition provided he is authorised by the competent health service institution to do so, and may do so at the expense of that institution<sup>3</sup>. Authorisation may not be refused where the treatment in question is among the benefits provided for by the legislation relating to the national health service of the member state on whose territory the person concerned resides and where he cannot be given such treatment within the time normally necessary for obtaining the treatment in question in the member state of residence taking account of his current state of health and the probable course of the disease<sup>4</sup>. Thus, subject to the following factors, a person resident in the United Kingdom<sup>5</sup> who is entitled to receive medical treatment under the National Health Service, and who is authorised by the competent institution<sup>6</sup> to do so, may receive that treatment in another member state at the expense of the National Health Service<sup>7</sup>.

A refusal to grant prior authorisation cannot be based merely on the existence of waiting lists intended to enable the supply of hospital care to be planned and managed on the basis of predetermined general clinical priorities, without carrying out an objective medical assessment of the patient's medical condition, the history and probable course of his illness, the degree of pain he is in, and/or the nature of his disability at the time when the request for authorisation was made or renewed<sup>8</sup>. Where the delay arising from such waiting lists appears to exceed an acceptable time having regard to such an objective medical assessment, the competent institution may not refuse the authorisation sought on the grounds of the existence of those waiting lists, an alleged distortion of the normal order of priorities linked to the relative urgency of the cases to be treated, the fact that the hospital treatment provided under the national system in question is free of charge, the obligation to make available specific funds to reimburse the cost of treatment to be provided in another member state, and/or a comparison between the cost of that treatment and that of equivalent treatment in the United Kingdom<sup>9</sup>. Where the cost of treatment is free of charge under the National Health Service<sup>10</sup>, the person concerned is entitled to be reimbursed for the whole cost, objectively quantified, of the treatment received even if the full cost of the treatment is not recoverable under the legislation of the member state in which the treatment occurred<sup>11</sup>. He is also entitled to seek from the competent institution reimbursement of the ancillary costs associated with the treatment abroad provided that there is a corresponding obligation to reimburse in respect of treatment provided in a local hospital<sup>12</sup>.

1 As to the meaning of 'member state' see the Interpretation Act 1978 s 5, Sch 1; European Communities Act 1972 s 1(2), Sch 1 Pt II.

2 See the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 49 (formerly art 59 and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ); Case C-372/04 *R (on the application of Watts) v Bedford Primary Care Trust* [2006] QB 667, [2006] All ER (EC) 835, ECJ.

3 See EC Council Regulation 1408/71 (OJ L149, 5.7.1971, p 2) art 22(1).

4 EC Council Regulation 1408/71 (OJ L149, 5.7.1971, p 2) art 22(2) (amended by EC Council Regulation 2793/81 (OJ L275, 29.9.1981, p 1)).

5 As to the meaning of 'United Kingdom' see PARA 15 note 8.

6 The competent institution will be the Secretary of State or a body to which he has delegated his functions relating to the health service. As to the duties of the Secretary of State to promote the National Health Service and to provide certain services see PARAS 10, 12. As to the Secretary of State's power to delegate his functions relating to the health service see PARA 7. As to the Secretary of State see PARA 6 note 8.

7 See Case C-372/04 *R (on the application of Watts) v Bedford Primary Care Trust* [2006] QB 667, [2006] All ER (EC) 835, ECJ.

8 Case C-372/04 *R (on the application of Watts) v Bedford Primary Care Trust* [2006] QB 667, [2006] All ER (EC) 835, ECJ.

9 Case C-372/04 *R (on the application of Watts) v Bedford Primary Care Trust* [2006] QB 667, [2006] All ER (EC) 835, ECJ.

10 As to the provision of services free of charge see PARA 10.

11 Case C-372/04 *R (on the application of Watts) v Bedford Primary Care Trust* [2006] QB 667, [2006] All ER (EC) 835, ECJ.

12 Case C-372/04 *R (on the application of Watts) v Bedford Primary Care Trust* [2006] QB 667, [2006] All ER (EC) 835, ECJ. As to the remission or repayment of charges and the payment of travelling expenses see PARA 475.

## **UPDATE**

### **13 Patients' right to treatment abroad**

NOTE 3--See Cases E-11/07 and E-1/08 *Rindal v Norway, represented by the Board of Exemptions and Appeals for Treatment Abroad* [2009] 3 CMLR 1168, EFTA Ct (refusal to cover expense of experimental treatment abroad did not restrict free movement of services where rules applied in same way to exclude experimental treatment in member state from coverage).

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#### **14. Right of European Union providers to offer NHS treatment in the United Kingdom.**

Just as there is a right for an individual ordinarily resident in a member state of the European Union to receive medical treatment in another member state at the expense of the health service in his home state<sup>1</sup>, so there may be a right for a provider of health services established in one member state to provide services in another member state at the expense of the health service in the latter member state. The position is, as yet, not settled, but the proposition in favour of such a right is based upon the argument that the provision of medical services to patients in these circumstances would engage the prohibition on restrictions on the freedom to provide services<sup>2</sup>, and that any refusal on the part of the health service in the patients' member state to reimburse the patients for the services they received would constitute a contravention of that prohibition<sup>3</sup>.

1 See PARA 13.

2 See the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 49 (formerly art 59 and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ).

3 See *European Surgeries Ltd v Cambridgeshire Primary Care Trust* [2007] EWHC 2758 (Admin), [2007] All ER (D) 403 (Nov) (affd sub nom *R (on the application of European Surgeries Ltd) v Cambridgeshire Primary Care Trust* [2008] EWCA Civ 416) in which these arguments were put forward but not considered, the case being dismissed on other grounds.

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## 15. Performance of functions outside England.

The Secretary of State<sup>1</sup> may provide or secure the provision of any of those services which he is under a duty to provide<sup>2</sup> outside England<sup>3</sup>. The Secretary of State's functions<sup>4</sup> may be performed outside England and Wales<sup>5</sup>, in so far as they relate to: (1) holidays for patients<sup>6</sup>; (2) the transfer of patients to or from Scotland, Northern Ireland, the Isle of Man or the Channel Islands<sup>7</sup>; or (3) the return of patients who have received treatment in England and Wales, to countries or territories outside the British Islands<sup>8</sup> (including for this purpose the Republic of Ireland)<sup>9</sup>.

In relation to any need arising anywhere within the Channel tunnel system (whether in England or in France) for the provision of medical services in an emergency, certain statutory provisions<sup>10</sup> apply as if the tunnel system were part of England and, in particular, of the local government district of Dover<sup>11</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 I.e. anything mentioned in the National Health Service Act 2006 s 3(1): see PARA 12.

3 National Health Service Act 2006 s 6(1). As to the meaning of 'England' see PARA 6 note 2. As to the equivalent provision to s 6 in relation to Wales see the National Health Service (Wales) Act 2006 s 6.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 As to the meaning of 'Wales' see PARA 6 note 2.

6 National Health Service Act 2006 s 6(2)(a). 'Patient' includes a woman who is pregnant or breast-feeding or who has recently given birth: s 275(1).

7 National Health Service Act 2006 s 6(2)(b).

8 'British Islands' means the United Kingdom, the Channel Islands and the Isle of Man; 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

9 National Health Service Act 2006 s 6(2)(c).

10 I.e. the National Health Service Act 2006 and the National Health Service and Community Care Act 1990 and subordinate legislation and other instruments made under those Acts.

11 Channel Tunnel (Emergency Medical Services) (No 2) Order 1991, SI 1991/1236, art 2 (amended by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4)). As to the Channel Tunnel see further **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 324.

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## **16. Directions to health service bodies.**

The Secretary of State<sup>1</sup> may give directions<sup>2</sup> to any of the following bodies about its exercise of any functions<sup>3</sup>. The bodies are strategic health authorities<sup>4</sup>, primary care trusts<sup>5</sup>, NHS trusts<sup>6</sup>, and special health authorities<sup>7</sup>. Except in prescribed<sup>8</sup> cases, the directions must not preclude a person or body by whom the function is exercisable apart from the directions or regulations from exercising the function<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. The territorial limit does not apply in relation to the National Health Service Act 2006 s 8(1) to such extent as it allows directions to be given in respect of matters concerning xenotransplantation, surrogacy agreements, embryology or human genetics: see s 271(3)(a); and PARA 6.

2 A direction by the Secretary of State under the National Health Service Act 2006 s 8 must be given by regulations or an instrument in writing: see s 273(4); and PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 8: the National Health Service (Venereal Diseases) Regulations 1974, SI 1974/29 (see PARA 84); the Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999, SI 1999/2337 (see PARA 111); the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048 (see PARAS 537, 541-547); the National Health Service (Complaints) Regulations 2004, SI 2004/1768 (see PARA 600 et seq); the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375 (see PARAS 89-93, 106, 127).

3 National Health Service Act 2006 s 8(1). Nothing in a provision made by or under the National Health Service Act 2006 or any other Act affects the generality of s 8(1): s 8(3). As to the meaning of 'functions' see PARA 6 note 3. See *R v North Derbyshire Health Authority, ex p Fisher* [1997] 8 Med LR 327, (1997) 38 BMLR 76, in which it was held that a circular issued by the Secretary of State did not constitute directions.

4 National Health Service Act 2006 s 8(2)(a). As to strategic health authorities see PARA 94 et seq.

5 National Health Service Act 2006 s 8(2)(b). As to primary care trusts see PARA 111 et seq.

6 National Health Service Act 2006 s 8(2)(c). As to NHS trusts see PARA 155. As to the delegation of this function to strategic health authorities see PARAS 89, 90.

7 National Health Service Act 2006 s 8(2)(d). As to special health authorities see PARA 136.

8 'Prescribed' means prescribed by regulations: see the National Health Service Act 2006 s 275(1).

9 National Health Service Act 2006 s 73(1), (2).



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## 17. Arrangements with other bodies.

The Secretary of State<sup>1</sup> may arrange with any person<sup>2</sup> or body, including voluntary organisations<sup>3</sup>, to provide, or assist in providing, any service under the National Health Service Act 2006<sup>4</sup>. The Secretary of State may make available any facilities<sup>5</sup> provided by him for any such service to any person or body carrying out any arrangements<sup>6</sup>, or to any voluntary organisation eligible for assistance<sup>7</sup> under the Health Services and Public Health Act 1968<sup>8</sup>. Where those facilities are made available, the Secretary of State may make available the services of any person employed in connection with the facilities by him<sup>9</sup>, a strategic health authority<sup>10</sup>, a primary care trust<sup>11</sup>, a special health authority<sup>12</sup>, or a local health board<sup>13</sup>.

These powers may be exercised on such terms as may be agreed, including terms as to the making of payments by or to the Secretary of State<sup>14</sup>. Goods<sup>15</sup> or materials may be made available either temporarily or permanently<sup>16</sup>; and any power to supply goods or materials includes a power to purchase and store them<sup>17</sup>, and a power to arrange with third parties for the supply of goods or materials by those third parties<sup>18</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 s 12 in relation to Wales see the National Health Service (Wales) Act 2006 s 10.

2 'Person', unless the contrary intention appears, includes a body of persons corporate or unincorporate: Interpretation Act 1978 s 5, Sch 1. As to bodies corporate and unincorporate see **COMPANIES** vol 14 (2009) PARAS 1-2; **CORPORATIONS**.

3 See the National Health Service Act 2006 s 12(2). 'Voluntary organisation' means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority: s 275(1). 'Local authority' means a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London, and the Council of the Isles of Scilly: s 275(1); Isles of Scilly (National Health Service) Order 1981, SI 1981/1473, reg 2(1). As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55. As to the Isles of Scilly (National Health Service) Order 1981, SI 1981/1473, see PARA 6 note 9.

4 National Health Service Act 2006 s 12(1).

5 As to the meaning of 'facilities' see PARA 12 note 7.

6 National Health Service Act 2006 s 12(3)(a).

7 ie under the Health Services and Public Health Act 1968 s 64 (see PARA 85) or s 65 (see PARA 238).

8 National Health Service Act 2006 s 12(3)(b).

9 National Health Service Act 2006 s 12(4)(a).

10 National Health Service Act 2006 s 12(4)(b). As to strategic health authorities see PARA 94 et seq.

11 National Health Service Act 2006 s 12(4)(c). As to primary care trusts see PARA 111 et seq.

12 National Health Service Act 2006 s 12(4)(d). As to special health authorities see PARA 136.

13 National Health Service Act 2006 s 12(4)(e). 'Local health board' means a body established under the National Health Service (Wales) Act 2006 s 11 (see PARA 74); National Health Service Act 2006 s 275(1).

14 National Health Service Act 2006 s 12(5).

15 As to the meaning of 'goods' see PARA 12 note 7.

16 National Health Service Act 2006 s 12(6)(a).

17 National Health Service Act 2006 s 12(7)(a).

18 National Health Service Act 2006 s 12(7)(b).

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## **18. Emergency powers.**

The Secretary of State<sup>1</sup> may give directions<sup>2</sup> if he considers that by reason of an emergency it is necessary to do so in order to ensure that a service falling to be provided under or by virtue of the National Health Service Act 2006 is provided<sup>3</sup>. Such directions may direct that, during the period specified by the directions, a function<sup>4</sup> conferred on any body or person<sup>5</sup> under or by virtue of the Act is to the exclusion of or concurrently with that body or person to be performed by another body or person<sup>6</sup>. The powers conferred on the Secretary of State by these provisions are in addition to any other powers exercisable by him<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 253 in relation to Wales see the National Health Service (Wales) Act 2006 s 191.

2 A direction by the Secretary of State must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4)(a); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

3 National Health Service Act 2006 s 253(1). The references in s 253 to the National Health Service Act 2006 do not include a reference to Pt 2 Ch 5 (ss 30-65) (NHS foundation trusts: see PARA 174 et seq): s 253(4).

4 As to the meaning of 'functions' see PARA 6 note 3.

5 As to the meaning of 'person' see PARA 17 note 2.

6 National Health Service Act 2006 s 253(2).

7 National Health Service Act 2006 s 253(3).

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## **19. Provision of information by the Registrar General.**

The Registrar General<sup>1</sup> may provide to the Secretary of State<sup>2</sup> any information<sup>3</sup>: (1) entered in any register kept under the Births and Deaths Registration Act 1953<sup>4</sup>; (2) entered in the adopted children register maintained by the Registrar General under the Adoption and Children Act 2002<sup>5</sup>; or (3) which is kept by the Registrar General under any other enactment<sup>6</sup> and relates to any birth or death<sup>7</sup>. Any information so provided must be provided in such form as appears to the Registrar General appropriate for the purpose of assisting the Secretary of State in the performance of his functions<sup>8</sup> in relation to the health service<sup>9</sup>.

1 Any powers and duties conferred or imposed by or under any enactment on the Registrar General are to be exercised by the Registrar General for England and Wales appointed under the Registration Act 1953: see s 1. As to the Registrar General see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARAS 605-608. As to the meaning of 'enactment' see PARA 10 note 7.

2 As to the Secretary of State see PARA 6 note 8. As to the equivalent provision in relation to Wales see the National Health Service (Wales) Act 2006 s 201.

3 National Health Service Act 2006 s 270(1).

4 National Health Service Act 2006 s 270(3)(a). As to registration under the Births and Deaths Registration Act 1953 see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 501 et seq.

5 National Health Service Act 2006 s 270(3)(b). As to the adopted children register see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 383.

6 In this context 'enactment' includes an enactment contained in subordinate legislation: National Health Service Act 2006 s 270(4). See also note 1.

7 National Health Service Act 2006 s 270(3)(c).

8 As to the meaning of 'functions' see PARA 6 note 3.

9 National Health Service Act 2006 s 270(2). As to the meaning of 'health service' see PARA 10 note 3.

## **UPDATE**

### **19 Provision of information by the Registrar General**

TEXT AND NOTES--See further Health Act 2009 s 36 (provision of information by Her Majesty's Revenue and Customs); and PARA 19A.

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**19A. Provision of information by Her Majesty's Revenue and Customs.**

Information held by Her Majesty's Revenue and Customs for the purposes of functions relating to income tax may be disclosed by Her Majesty's Revenue and Customs to (1) the Secretary of State; (2) the Welsh Ministers; (3) the Scottish Ministers; (4) the Department of Health, Social Services and Public Safety in Northern Ireland; and (5) persons providing services to or exercising functions on behalf of any of those persons, for use for the purposes of functions in connection with the analysis or dissemination of information relating to the income or expenses of dental practitioners or general medical practitioners: Health Act 2009 s 36(1)-(3). However, such information may be disclosed only in the form of a summary or collection of information so framed as not to enable information relating to a particular person to be ascertained from it: s 36(4).

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## 20. Instruction for health officers and others.

The Secretary of State<sup>1</sup> may, either directly or by entering into arrangements with others<sup>2</sup> provide: (1) for persons employed or having it in contemplation to be employed as officers or servants of a strategic health authority<sup>3</sup>, special health authority<sup>4</sup>, primary care trust<sup>5</sup> or local health board<sup>6</sup>, such instruction as appears to him conducive to securing their efficiency as such officers or servants<sup>7</sup>; (2) for certain other persons<sup>8</sup> who are employed, or have it in contemplation to be employed, in a specified activity<sup>9</sup>, such instruction as appears to him conducive to the efficient carrying on of that activity<sup>10</sup>; and (3) material and premises necessary for, or in connection with, the provision of any such instruction<sup>11</sup>. Instruction may be provided on such terms, including terms as to payment of charges, as the Secretary of State thinks fit<sup>12</sup>.

The Secretary of State may by regulations<sup>13</sup> provide for any functions<sup>14</sup> exercisable by a strategic health authority, special health authority, primary care trust or local health board under or in relation to arrangements made under these provisions to be exercisable by the strategic health authority, special health authority, primary care trust or local health board jointly with one or more other relevant health service bodies<sup>15</sup>.

1 The Health Services and Public Health Act 1968 s 63 referred originally to the Minister of Health. The functions of that minister were transferred to the Secretary of State by the Secretary of State for Social Services Order 1968, SI 1968/1699, and the Transfer of Functions (Health and Social Security Order) 1988, SI 1988/1843. As to the Secretary of State see PARA 6 note 8. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89.

All the functions of a Minister of the Crown under the Health Services and Public Health Act 1968, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. These functions are now vested in the Welsh Ministers: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

2 The Secretary of State may, with the approval of the Treasury, make grants and pay fees to persons or bodies with whom arrangements are made for the provision of instruction and for ancillary administrative purposes: Health Services and Public Health Act 1968 s 63(6)(a) (amended by the Health and Medicines Act 1988 s 20). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517. Any expenses incurred by the Secretary of State in the exercise of any of his powers under the Health Services and Public Health Act 1968 and any increase attributable to the provisions of the Act in the sums payable out of moneys so provided under any other Act, are to be defrayed out of moneys provided by Parliament: see s 77(1). All sums received, by virtue of the Act, by the Secretary of State must be paid into the Exchequer: s 77(2). As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804. As to the Exchequer see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711.

3 As to strategic health authorities see PARA 94 et seq.

4 As to special health authorities see PARA 136.

5 As to primary care trusts see PARA 111 et seq.

6 As to the meaning of 'local health board' see PARA 17 note 13: definition applied by the Health Services and Public Health Act 1968 s 63(8A) (added by the Health Authorities Act 1995 s 2(1), Sch 1 para 95(2)(d); and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 33, 38(f)).

7 Health Services and Public Health Act 1968 s 63(1)(a) (amended by the Health Act 1999 s 65, Sch 4 para 3(a); the National Health Service Reform and Health Care Professions Act 2002 s 6(2), Sch 5 para 2(1), (2); SI 2002/2469; SI 2007/961).

8 The persons, other than such as are mentioned in the Health Services and Public Health Act 1968 s 63(1)(a) (see the text to notes 3-7), of such class as may be determined by the Secretary of State: s 63(1)(b) (amended by the National Health Service Reorganisation Act 1973 s 57, Sch 4 para 124).

9 The specified activities are:

- 1 (1) an activity involved in the provision of a service which must or may, by virtue of the relevant enactments, be provided or the provision of which must or may, by virtue of those enactments, be secured by the Secretary of State or the council of a non-metropolitan county, county borough, metropolitan district or London borough or the Common Council of the City of London: Health Services and Public Health Act 1968 s 63(2)(a) (amended by the National Health Service Reorganisation Act 1973 s 57, Sch 4 para 124; the Local Government Act 1985 s 102, Sch 17; SI 1996/1008);
- 2 (2) the provision or performance of a primary medical service (see PARA 241) or primary dental service (see PARA 277) under either of the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 and an activity involved in or connected with the provision or performance of such a service: Health Services and Public Health Act 1968 s 63(2)(aa) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 paras 2, 4(a); and amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 33, 38(a));
- 3 (3) the provision of a service for the provision of which a primary care trust or local health board is, by virtue of the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133) (see PARA 339 et seq), or the National Health Service (Wales) Act 2006 Pt 6 or Pt 7 Ch 1, under a duty to make arrangements and an activity involved in or connected with the provision of such a service: Health Services and Public Health Act 1968 s 63(2)(b) (amended by the Health Authorities Act 1995 s 2(1), Sch 1 para 95(2)(b); the National Health Service Reform and Health Care Professions Act 2002 s 2(5), Sch 2 Pt 2 para 40(1), (2); the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 33, 38(b); SI 2007/961);
- 4 (4) the provision of a local pharmaceutical service under a pilot scheme (see PARA 419 et seq) or an LPS scheme (see PARA 431 et seq) established under either the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 or under any corresponding provision of the law in force in the Isle of Man and an activity involved in or connected with the provision of such a service: Health Services and Public Health Act 1968 s 63(2)(bb) (added by the Health and Social Care Act 2001 s 67(1), Sch 5 Pt 1 para 1(1), (3); and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 33, 38(c));
- 5 (5) an activity involved in the provision of a service which must or may, by virtue of the relevant enactments, be provided or the provision of which must or may, by virtue of those enactments, be secured by the Secretary of State: Health Services and Public Health Act 1968 s 63(2)(c).

'Relevant enactments' means: (a) in relation to head (1) above, any enactment functions under which are social services functions within the meaning of the Local Authority Social Services Act 1970 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006) and the National Health Service Act 2006 (see PARA 239); (b) in relation to head (5) above, the National Assistance Act 1948 Pt III (ss 21-36) (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1029 et seq), the Health Services and Public Health Act 1968 s 45 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1024) and the National Health Service Act 2006 and National Health Service (Wales) Act 2006: Health Services and Public Health Act 1968 s 63(8) (definition amended by the National Health Service Act 1977 s 129, Sch 15 para 45; the Health and Medicines Act 1988 s 20; the Children Act 2004 s 55(3); the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 33, 38(e)). As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.

10 Health Services and Public Health Act 1968 s 63(1)(b).

11 Health Services and Public Health Act 1968 s 63(1)(c).

12 Health Services and Public Health Act 1968 s 63(5). The Secretary of State may, with the approval of the Treasury, pay travelling and other allowances to persons availing themselves of instruction: s 63(6)(b). See also note 2.

13 In the case of regulations made by the Secretary of State, the National Health Service Act 2006 s 272 (see PARA 9) applies to such regulations, and in the case of regulations made by the Welsh Ministers, the

National Health Service (Wales) Act 2006 s 203 applies to the regulations: see the Health Services and Public Health Act 1968 s 63(5A)(a), (b) (s 63(5A), (5B) added by the Health Authorities Act 1995 Sch 1 para 95(2)(c); Health Services and Public Health Act 1968 s 63(5A)(a), (b) substituted by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 33, 38(d)).

14 As to the meaning of 'functions' see PARA 6 note 3: definition applied by the Health Services and Public Health Act 1968 s 63(8A) (as added and amended: see note 6).

15 Health Services and Public Health Act 1968 s 63(5A) (as added (see note 13); and amended by the Health Act 1999 Sch 4 para 3(b); the National Health Service Reform and Health Care Professions Act 2002 Sch 5 para 2(1), (3); SI 2002/2202; SI 2007/961). The following are relevant health service bodies: strategic health authorities, special health authorities, primary care trusts, local health boards, NHS trusts and NHS foundation trusts: Health Services and Public Health Act 1968 s 63(5B) (as so added; and amended by the Health Act 1999 Sch 4 para 3(c); the National Health Service Reform and Health Care Professions Act 2002, ss 6(2), 37(2), Sch 5 para 2(1), (4), Sch 9 Pt 1; SI 2002/2202; the Health and Social Care (Community Health and Standards) Act 2003 ss 34, 196, Sch 4 paras 13, 14, Sch 14 Pt 1; SI 2007/961). As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. The following regulations have been made: the National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996, SI 1996/708 (see PARA 142); the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375 (see PARAS 89-93, 106, 127).

## **UPDATE**

### **20 Instruction for health officers and others**

NOTE 9--Head (4), after 'pilot scheme' read 'established under the National Health Service Act 2006 s 134(1) or the National Health Service (Wales) Act 2006 s 92(1): Health Service and Public Health Act 1968 s 63(2)(bb) (amended by the Health Act 2009 Sch 1 para 2).



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## **21. Supplies.**

Where the Secretary of State<sup>1</sup> has acquired supplies of human blood for the purposes of any service under the National Health Service Act 2006<sup>2</sup>, any part of a human body for the purpose of, or in the course of providing, any such service<sup>3</sup>, or supplies of any other substances or preparations not readily obtainable<sup>4</sup>, he may arrange to make such supplies or that part available (on such terms, including terms as to charges, as he considers appropriate) to any person<sup>5</sup>. The Secretary of State may exercise these powers only if, and to the extent that, he is satisfied that anything which he proposes to do or allow under them will not to a significant extent interfere with the performance by him of any duty imposed on him by the Act to provide accommodation or services of any kind<sup>6</sup>, and will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals<sup>7</sup> (whether as resident or non-resident patients<sup>8</sup>) otherwise than as private patients<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 255 in relation to Wales see the National Health Service (Wales) Act 2006 s 193.

2 National Health Service Act 2006 s 255(1)(a).

3 National Health Service Act 2006 s 255(1)(b).

4 National Health Service Act 2006 s 255(1)(c).

5 National Health Service Act 2006 s 255(1). As to the meaning of 'person' see PARA 17 note 2.

6 National Health Service Act 2006 s 255(2)(a). As to the duty of the Secretary of State to provide hospital and other accommodation and certain services see PARA 12.

7 'Health service hospital' means a hospital vested in the Secretary of State for the purposes of his functions under the National Health Service Act 2006 or vested in a primary care trust, an NHS trust or an NHS foundation trust: s 275(1). As to the meaning of 'hospital' see PARA 12 note 4. As to the meaning of 'functions' see PARA 6 note 3. As to primary care trusts see PARA 111 et seq. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to the transfer of property to a primary care trust see PARA 125; and to an NHS trust see PARA 165.

For the purposes of s 255 'health service hospital' also includes such a hospital within the meaning of the National Health Service (Wales) Act 2006 s 206: National Health Service Act 2006 s 255(3). In the National Health Service (Wales) Act 2006 'health service hospital' means a hospital vested in the Welsh Ministers for the purposes of their functions under that Act or vested in an NHS trust: s 206(1). As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the functions of the Welsh Ministers under the National Health Service (Wales) Act 2006 see PARA 74.

8 As to the meaning of 'patient' see PARA 15 note 6.

9 National Health Service Act 2006 s 255(2)(b). As to the National Health Service and private practice see PARA 745 et seq.

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## **22. Clinical teaching and research.**

The Secretary of State<sup>1</sup> must exercise his functions<sup>2</sup> under the National Health Service Act 2006 so as to secure that there are made available such facilities<sup>3</sup> as he considers are reasonably required by any university<sup>4</sup> which has a medical<sup>5</sup> or dental school, in connection with clinical teaching<sup>6</sup> and research connected with clinical medicine or clinical dentistry<sup>7</sup>. Regulations<sup>8</sup> may provide for any functions exercisable by a strategic health authority<sup>9</sup>, primary care trust<sup>10</sup>, special health authority<sup>11</sup> or local health board<sup>12</sup>, in relation to the provision of facilities such as are mentioned above<sup>13</sup>, to be exercisable by the body jointly with one or more NHS body<sup>14</sup> other than an NHS foundation trust<sup>15</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 s 258 in relation to Wales see the National Health Service (Wales) Act 2006 s 197.

2 As to the meaning of 'functions' see PARA 6 note 3.

3 As to the meaning of 'facilities' see PARA 12 note 7.

4 'University' includes a university college: National Health Service Act 2006 s 275(1).

5 As to the meaning of 'medical' see PARA 10 note 5.

6 National Health Service Act 2006 s 258(1)(a).

7 National Health Service Act 2006 s 258(1)(b).

8 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9.

9 As to strategic health authorities see PARA 94 et seq.

10 As to primary care trusts see PARA 111 et seq.

11 As to special health authorities see PARA 136.

12 National Health Service Act 2006 s 258(2)(a). As to the meaning of 'local health board' see PARA 17 note 13.

13 National Health Service Act 2006 s 258(2)(b).

14 As to the meaning of 'NHS body' see PARA 8 note 2.

15 National Health Service Act 2006 s 258(2). As to NHS foundation trusts see PARA 174. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under these provisions: the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375: see PARAS 89-93, 106, 127.

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### **23. Persons displaced by health service development.**

Where the carrying out of a scheme for the provision by the Secretary of State<sup>1</sup> of hospital accommodation<sup>2</sup> or other facilities<sup>3</sup> will involve the displacement from any premises of persons living in the premises<sup>4</sup>, and in so far as it appears to him that there is no other residential accommodation suitable for the reasonable requirements of those persons available on reasonable terms<sup>5</sup>, the Secretary of State may make arrangements with one or more of the specified bodies<sup>6</sup> for securing the provision, in advance of the displacement, of residential accommodation which becomes necessary as the carrying out of the scheme proceeds<sup>7</sup>. Such arrangements may include provision for the making of payments by the Secretary of State to the body with whom the arrangements are made<sup>8</sup>.

1     le a scheme in pursuance of the National Health Service Act 2006. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 268 in relation to Wales see the National Health Service (Wales) Act 2006 s 199.

2     As to the meaning of 'hospital accommodation' see PARA 12 note 4.

3     As to the meaning of 'facilities' see PARA 12 note 7.

4     National Health Service Act 2006 s 268(1)(a). As to the duty of the Secretary of State to provide hospital accommodation and other facilities see PARA 12. As to the power of the Secretary of State to acquire land and other property see PARA 24.

5     National Health Service Act 2006 s 268(1)(b).

6     The specified bodies are a local housing authority (within the meaning of the Housing Act 1985: see **HOUSING** vol 22 (2006 Reissue) PARA 9), a housing association or housing trust (within the meaning of the Housing Associations Act 1985: see **HOUSING** vol 22 (2006 Reissue) PARAS 11, 12), a development corporation established under the New Towns Act 1981 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1322), and the Commission for the New Towns (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1383 et seq): National Health Service Act 2006 s 268(3).

7     National Health Service Act 2006 s 268(2).

8     National Health Service Act 2006 s 268(4).

#### **UPDATE**

### **23 Persons displaced by health service development**

NOTE 1--National Health Service (Wales) Act 2006 s 199 amended: SI 2008/3002.

NOTE 6--National Health Service Act 2006 s 268(3) amended: SI 2008/3002.

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## (B) PROPERTY, FINANCE AND THE FORMATION OF COMPANIES

### 24. Acquisition, use and maintenance of property.

The Secretary of State<sup>1</sup> may acquire any land<sup>2</sup>, either by agreement or compulsorily<sup>3</sup>, and any other property<sup>4</sup>, required by him for the purposes of the National Health Service Act 2006<sup>5</sup>. In particular, land may be so acquired to provide residential accommodation for persons employed for any of those purposes<sup>6</sup>. The Secretary of State may use for the purposes of any of the functions<sup>7</sup> conferred on him by the National Health Service Act 2006 any property belonging to him by virtue of the Act, and he has power to maintain all such property<sup>8</sup>.

A local social services authority<sup>9</sup> may be authorised to purchase land compulsorily for the purposes of the National Health Service Act 2006 by means of an order made by the authority and confirmed by the Secretary of State<sup>10</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities see PARA 89. As to the equivalent provision to the National Health Service Act 2006 s 211 in relation to Wales see the National Health Service (Wales) Act 2006 s 159.

2 'Land' includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land: Interpretation Act 1978 s 5, Sch 1. In the National Health Service Act 2006 s 80 (see PARA 237), s 211 and s 217 (see PARA 71), the meaning of 'land' is subject to the Interpretation Act 1978 ss 22, 23, Sch 2 para 5(b) which provide that in any Act passed before 1 January 1979 and after the year 1850, 'land' includes messuages, tenements and hereditaments, houses and buildings of any tenure: see the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 2 para 10.

3 National Health Service Act 2006 s 211(1)(a). The Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND**) applies to the compulsory purchase of land under the National Health Service Act 2006 s 211: s 211(5). The Local Government Act 1972 s 120(3) (which relates to the application of the Compulsory Purchase Act 1965 Pt 1 where a council is authorised to acquire land by agreement: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 509) applies to the acquisition of land by the Secretary of State under the National Health Service Act 2006 s 211 as it applies to such acquisition by a council under that section: s 211(6). The Town and Country Planning Act 1990 ss 238 and 239 (use and development of consecrated land and burial grounds: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 956; **CREMATION AND BURIAL** vol 10 (Reissue) PARA 1170) apply to consecrated land or land comprised in a burial ground (within the meaning of s 240) which the Secretary of State holds for the purposes of the health service, and has not been the subject of a relevant acquisition (within the meaning of that section) by him, as if that land had been the subject of such an acquisition by him for those purposes: National Health Service Act 2006 s 211(7). As to the meaning of 'health service' see PARA 10 note 3.

4 National Health Service Act 2006 s 211(1)(b). As to the meaning of 'property' see PARA 4 note 9.

5 National Health Service Act 2006 s 211(1).

6 National Health Service Act 2006 s 211(2).

7 As to the meaning of 'functions' see PARA 6 note 3.

8 National Health Service Act 2006 s 211(3). As to the power of the Secretary of State to make available accommodation for the provision of primary medical services, primary dental services or pharmaceutical services see ss 98, 114, 168; and PARAS 271, 293, 352.

9 'Local social services authority' means the council of a non-metropolitan county, of a county borough or of a metropolitan district or London borough, or the Common Council of the City of London: National Health

Service Act 2006 s 275(1). As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.

10 National Health Service Act 2006 s 211(4). The power to make such an order is not exercisable by statutory instrument (see s 272(2), (3)(c): PARA 9) and such orders are not recorded in this work.

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## **25. Formation of companies.**

The Secretary of State<sup>1</sup> may form, or participate in forming, companies<sup>2</sup> to provide facilities<sup>3</sup> or services to persons<sup>4</sup> or bodies exercising functions<sup>5</sup>, or otherwise providing services, under the National Health Service Act 2006<sup>6</sup>. The Secretary of State may, with a view to securing or facilitating the provision by companies of facilities or services to such persons or bodies, invest in the companies (whether by acquiring assets, securities or rights or otherwise)<sup>7</sup>, or provide loans and guarantees and make other kinds of financial provision to or in respect of them<sup>8</sup>, or both<sup>9</sup>. For these purposes<sup>10</sup> it is immaterial that the facilities or services provided or to be provided by the companies in question are not provided or to be provided only to persons or bodies specified above<sup>11</sup>, or to such persons or bodies only in their capacities as persons or bodies such as are mentioned above<sup>12</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 s 223 in relation to Wales see the National Health Service (Wales) Act 2006 s 170.

2 'Companies' means companies within the meaning of the Companies Act 1985 (see **COMPANIES** vol 14 (2009) PARAS 1, 24); National Health Service Act 2006 s 223(4).

3 As to the meaning of 'facilities' see PARA 12 note 7.

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the meaning of 'functions' see PARA 6 note 3.

6 National Health Service Act 2006 s 223(1). Section 223 does not affect any powers of the Secretary of State exercisable otherwise than by virtue of that section: s 223(5).

7 National Health Service Act 2006 s 223(2)(a).

8 National Health Service Act 2006 s 223(2)(b).

9 National Health Service Act 2006 s 223(2).

10 Ie for the purposes of the National Health Service Act 2006 s 223(1), (2): see the text to notes 1-9.

11 National Health Service Act 2006 s 223(3)(a).

12 National Health Service Act 2006 s 223(3)(b).

### **UPDATE**

## **25 Formation of companies**

NOTES 1, 2--National Health Service Act 2006 s 223(4), National Health Service (Wales) Act 2006 s 170(4) amended: SI 2009/1941.

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## **26. Finance.**

The Secretary of State<sup>1</sup> has a duty to pay each year to strategic health authorities<sup>2</sup>, special health authorities<sup>3</sup> and primary care trusts<sup>4</sup> sums not exceeding the amount allotted for that year by him to those bodies towards meeting their expenditure attributable to the performance of their functions in that year<sup>5</sup>. Each such body has financial duties in respect of its annual expenditure and use of resources, and the Secretary of State may give directions to an authority or trust to secure that it complies with that duty<sup>6</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to strategic health authorities see PARA 94 et seq.

3 As to special health authorities see PARA 136.

4 As to primary care trusts see PARA 111 et seq.

5 See the National Health Service Act 2006 s 224, s 225, s 228; and PARAS 505, 506, 509.

6 See the National Health Service Act 2006 s 226, s 227, s 229, s 230; and PARAS 507, 508, 510, 511.

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## ***B. PRICE OF MEDICAL SUPPLIES***

### **27. Control of maximum price of medical supplies.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for the control of maximum prices to be charged for any medical supplies, other than health service medicines<sup>3</sup>, required for the purposes of the National Health Service Act 2006<sup>4</sup>. The Secretary of State may by direction<sup>5</sup> given with respect to any undertaking, or by order<sup>6</sup> made with respect to any class or description of undertakings, require persons carrying on the undertaking or undertakings of that class or description to keep such books, accounts and records relating to the undertaking as may be prescribed by the direction, the order or a notice<sup>7</sup> served under the order<sup>8</sup>, and to furnish at such times, in such manner and in such form as may be so prescribed such estimates, returns or information relating to the undertaking as may be so prescribed<sup>9</sup>.

A person must not, with intent to deceive: (1) use any document issued for the purposes of these provisions<sup>10</sup>; (2) have in his possession any document so closely resembling such a document as to be calculated to deceive<sup>11</sup>; or (3) produce, furnish, send or otherwise make use of for purposes connected with these provisions<sup>12</sup>, any book, account, estimate, return, declaration or other document which is false in a material particular<sup>13</sup>. A person must not, in furnishing any information<sup>14</sup> make a statement which he knows to be false in a material particular<sup>15</sup>, or recklessly make a statement which is false in a material particular<sup>16</sup>.

No person<sup>17</sup> who obtains any information<sup>18</sup> may<sup>19</sup> disclose that information except for the purposes of any criminal proceedings, or of a report of any criminal proceedings<sup>20</sup>, or with permission granted by or on behalf of a Minister of the Crown<sup>21</sup>.

A person who contravenes or fails to comply with an order, direction, requirement<sup>22</sup>, or other provision<sup>23</sup>, is guilty of an offence<sup>24</sup>. Where an offence<sup>25</sup> committed by a body corporate is proved to have been committed with the consent or connivance of any director<sup>26</sup>, manager, secretary of other similar officer of the body corporate, or a person purporting to act in any such capacity<sup>27</sup>, or to be attributable to any neglect on the part of such a person<sup>28</sup>, that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly<sup>29</sup>.

1 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the National Health Service Act 2006 s 260 and Sch 22 (see PARA 28) and ss 261-266 (see PARAS 29-32) and therefore these provisions apply to both England and Wales: see s 271(3)(i); and PARA 6. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 The power to make an order under the National Health Service Act 2006 s 260 includes power to provide for any incidental and supplementary provisions which the Secretary of State considers it expedient for the purposes of the order to provide: s 260(3). An order may make such provision (including provision for requiring any person to furnish any information) as the Secretary of State considers necessary or expedient for facilitating the introduction or operation of a scheme of control for which provision has been made under s 260, or for which, in his opinion, it will or may be necessary or expedient that provision should be made: Sch 22 para 1(1). An order: (1) may prohibit the doing of anything regulated by the order except under the authority of a licence granted by such authority or person as may be specified in the order (Sch 22 para 1(2)(a)), and may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings, and so as to have effect either generally or in any particular area (Sch 22 para 1(2)(b)). Any permit, licence, permission or authorisation granted for these purposes may be revoked at any time by the authority or person empowered to grant it: Sch 22 para 2(3). 'Undertaking' means any public utility undertaking or any undertaking by way of trade or business, which is concerned with medical supplies required



for the purposes of the National Health Service Act 2006: s 260(5). 'Medical supplies' includes surgical, dental and optical materials and equipment; and 'equipment' includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle: s 260(5). As to the meaning of 'person' see PARA 17 note 2. As to the making of orders see PARA 9. At the date at which this volume states the law no such order had been made.

3 As to voluntary schemes relating to the supply of health service medicines see PARA 31.

4 National Health Service Act 2006 s 260(1). Provisions in or having effect under s 260 or Sch 22 which impose prohibitions, restrictions or obligations apply to persons in the United Kingdom, persons on board any British ship or aircraft (other than an excepted ship or aircraft), and persons (wherever they are) who are ordinarily resident in the United Kingdom and are British citizens, British overseas territories citizens, British Overseas citizens, British subjects under the British Nationality Act 1981, British Nationals (Overseas) (within the meaning of that Act), or British protected persons (within the meaning of that Act): National Health Service Act 2006 Sch 22 para 3(1). 'British aircraft' means an aircraft registered in any part of Her Majesty's dominions, any country outside Her Majesty's dominions in which Her Majesty has jurisdiction, any country consisting partly of one or more colonies and partly of one or more such countries: Sch 22 para 3(2). 'Excepted ship or aircraft' means a ship or aircraft registered in any country listed in the British Nationality Act 1981 Sch 3 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 11) or in any territory administered by the government of any such country, other than a ship or aircraft at the disposal of, or chartered by or on behalf of, Her Majesty's Government in the United Kingdom: National Health Service Act 2006 Sch 22 para 3(2). As to the meaning of 'United Kingdom' see PARA 15 note 8. As to ships which are deemed to be British ships see the Merchant Shipping Act 1995 s 1(1); and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 230. As to the meanings of 'British citizen', 'British overseas territories citizen', 'British Overseas citizen', 'British subject', 'British National (Overseas)' and 'British protected person' see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq. 'Her Majesty's dominions' is not defined for the purposes of statutory interpretation generally but see **COMMONWEALTH** vol 13 (2009) PARA 707. As to the meaning of 'colony' see **COMMONWEALTH** vol 13 (2009) PARA 705.

5 Such a direction must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4)(a); and PARA 9. A document purporting to be duly executed under or by virtue of s 260 or Sch 22 and signed by or on behalf of the person making it must be received in evidence and, unless the contrary is proved, taken to be so executed and signed: Sch 22 para 2(4). As to the meaning of 'writing' see PARA 7 note 2.

6 See note 2. At the date at which this volume states the law no such order had been made.

7 A notice to be served on any person for the purposes of the National Health Service Act 2006 s 260, or of any order or direction made or given under that section, is deemed to have been duly served on the person to whom it is directed if it is delivered to him personally, or it is sent by registered post or the recorded delivery service addressed to him at his last or usual place of abode or place of business: Sch 22 para 2(1). Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post: Interpretation Act 1978 s 7. References to sending by registered post include sending by recorded delivery service: see the Recorded Delivery Service Act 1962 s 1. A requirement to send a document by post is not limited to requiring it to be sent by the Post Office postal system: see the Postal Services Act 2000 s 127(4), Sch 8 Pt 1; and **POST OFFICE**.

8 National Health Service Act 2006 s 260(2)(a).

9 National Health Service Act 2006 s 260(2)(b). As to powers relating to the production of documents see PARA 28.

10 National Health Service Act 2006 Sch 22 para 4(1)(a). The provisions referred to are s 260 or Sch 22 or of any order made under s 260.

11 National Health Service Act 2006 Sch 22 para 4(1)(b).

12 Ie the National Health Service Act 2006 s 260 or Sch 22 or any order or direction made or given under s 260.

13 National Health Service Act 2006 Sch 22 para 4(1)(c).

14 Ie for the purposes of the National Health Service Act 2006 s 260 or Sch 22 or of any order made under s 260.

15 National Health Service Act 2006 Sch 22 para 4(2)(a).

16 National Health Service Act 2006 Sch 22 para 4(2)(b).

17 National Health Service Act 2006 Sch 22 para 5 does not apply if the person who has obtained any such information as is referred to in that paragraph is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000 (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583) and the information is not held by the public authority on behalf of another person: National Health Service Act 2006 Sch 22 para 6.

18 Ie by virtue of the National Health Service Act 2006 s 260 or Sch 22.

19 Ie otherwise than in connection with the execution of the National Health Service Act 2006 s 260 or Sch 22 or of an order made under s 260.

20 National Health Service Act 2006 Sch 22 para 5(a).

21 National Health Service Act 2006 Sch 22 para 5(b).

22 Ie an order made, direction given or requirement imposed under the National Health Service Act 2006 s 260.

23 Ie of the National Health Service Act 2006 Sch 22.

24 National Health Service Act 2006 Sch 22 para 8(1). This provision does not apply if the contravention or failure is an offence under Sch 22 para 9(3) or 10(5) (see PARA 28): Sch 22 para 8(2). A person guilty of such an offence is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the prescribed sum, or to both (Sch 22 para 8(3)(a)), or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both (Sch 22 para 8(3)(b)). In relation to an offence committed in England and Wales before the commencement of the Criminal Justice Act 2003 s 154(1) (not yet in force) (general limit on magistrates' courts power to impose imprisonment: see **MAGISTRATES**) the National Health Service Act 2006 Sch 22 para 8(3) has effect as if for '12 months' there were substituted 'three months': National Health Service Act 2006 Sch 22 paras 8(4), 11(1). 'Prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

25 Ie under the National Health Service Act 2006 s 260 or Sch 22.

26 'Director', in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, and whose affairs are managed by its members, means a member of that body corporate: National Health Service Act 2006 Sch 22 para 7(2). As to the meaning of 'enactment' see PARA 10 note 7.

27 National Health Service Act 2006 Sch 22 para 7(1)(a).

28 National Health Service Act 2006 Sch 22 para 7(1)(b).

29 National Health Service Act 2006 Sch 22 para 7(1). As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**.

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## **28. Production of documents relating to a scheme of control.**

For the purposes of: (1) securing compliance with any order made or direction given<sup>1</sup> by or on behalf of the Secretary of State<sup>2</sup>; or (2) verifying any estimates, returns or information furnished<sup>3</sup> to the Secretary of State<sup>4</sup>, an officer<sup>5</sup> of the Secretary of State duly authorised<sup>6</sup> in that behalf has power, on producing (if required to do so) evidence of his authority, to require any person<sup>7</sup> carrying on an undertaking<sup>8</sup> or employed in connection with an undertaking to produce to that officer forthwith any documents relating to the undertaking which that officer may reasonably require for the purposes set out above<sup>9</sup>. The power to require any person to produce documents includes power: (a) if the documents are produced, to take copies of them or extracts from them and to require that person, or where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them<sup>10</sup>; (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are<sup>11</sup>. If any requirement to produce documents or provide an explanation or make a statement is not complied with, the person on whom the requirement was imposed is guilty of an offence<sup>12</sup>. Where a person is charged with such an offence in respect of a requirement to produce any document, it is a defence to prove that it was not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement<sup>13</sup>.

A justice of the peace<sup>14</sup> may issue a warrant if he is satisfied, on information on oath<sup>15</sup> laid on the Secretary of State's behalf, that there are any reasonable grounds for suspecting that there are on any premises any documents of which production has been required and which have not been produced in compliance with that requirement<sup>16</sup>. A warrant so issued may authorise any constable<sup>17</sup>, together with any other persons named in the warrant and any other constables to enter the premises specified in the information (using such force as is reasonably necessary for the purpose)<sup>18</sup>, and search the premises and take possession of any documents appearing to be such documents as are mentioned above, or to take in relation to any documents so appearing any other steps which may appear necessary for preserving them and preventing interference with them<sup>19</sup>. A person is guilty of an offence if he obstructs the exercise of any right of entry or search conferred by virtue of a warrant, or any rights so conferred to take possession of any documents<sup>20</sup>.

1    Ie under the National Health Service Act 2006 s 260: see PARA 27.

2    National Health Service Act 2006 Sch 22 para 9(1)(a). As to the Secretary of State see PARA 6 note 8. Schedule 22 applies to both England And Wales: see PARA 27 note 1.

3    Ie in connection with the National Health Service Act 2006 s 260 or any order made or direction given under that section: see PARA 27.

4    National Health Service Act 2006 Sch 22 para 9(1)(b).

5    'Officer' includes servant: National Health Service Act 2006 s 275(1).

6    Where a person has power to authorise other persons to act under the National Health Service Act 2006 s 260 (see PARA 27) or Sch 22, the power may be exercised so as to confer the authority either on particular persons or on a specified class of persons: Sch 22 para 2(2). A document purporting to be duly executed under or by virtue of s 260 or Sch 22 and signed by or on behalf of the person making it must be received in evidence and, unless the contrary is proved, taken to be so executed and signed: Sch 22 para 2(4).

7 As to the meaning of 'person' see PARA 17 note 2. As to the persons to whom the National Health Service Act 2006 Sch 22 applies in respect of any prohibitions, restrictions or obligations imposed thereby see PARA 27 note 4.

8 As to the meaning of 'undertaking' see PARA 27 note 2.

9 National Health Service Act 2006 Sch 22 para 9(1).

10 National Health Service Act 2006 Sch 22 para 9(2)(a).

11 National Health Service Act 2006 Sch 22 para 9(2)(b).

12 National Health Service Act 2006 Sch 22 para 9(3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 22 para 9(3). In relation to an offence committed in England and Wales before the commencement of the Criminal Justice Act 2003 s 280 (not yet in force) (alteration of penalties for specified summary offences) the National Health Service Act 2006 Sch 22 para 9(3) has effect as if 'to imprisonment for a term not exceeding three months or' were inserted after 'conviction': Sch 22 paras 9(4), 11(2). As to offences by bodies corporate see PARA 27.

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

13 National Health Service Act 2006 Sch 22 para 9(5).

14 As to justices of the peace see **MAGISTRATES** vol 29(2) (Reissue) PARA 501 et seq.

15 'Oath' includes affirmation and declaration: Interpretation Act 1978 s 5, Sch 1. As to oaths, affirmations and declarations see **CIVIL PROCEDURE** vol 11 (2009) PARA 1021 et seq.

16 National Health Service Act 2006 Sch 22 para 10(1). Each warrant issued under this provision continues in force until the end of the period of one month after the date on which it is issued: Sch 22 para 10(3). 'Month' means calendar month: Interpretation Act 1978 s 5, Sch 1.

17 As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

18 National Health Service Act 2006 Sch 22 para 10(2)(a).

19 National Health Service Act 2006 Sch 22 para 10(2)(b). Any documents of which possession is taken may be retained for a period of three months, or if within that period proceedings to which they are relevant are commenced for an offence under s 260 (see PARA 27) or Sch 22, until the conclusion of those proceedings: Sch 22 para 10(4).

20 National Health Service Act 2006 Sch 22 para 10(5). The penalty for such an offence is, on summary conviction, a fine not exceeding level 3 on the standard scale: Sch 22 para 10(5). In relation to such an offence committed in England and Wales before the commencement of the Criminal Justice Act 2003 s 280 (not yet in force) (alteration of penalties for specified summary offences) the National Health Service Act 2006 Sch 22 para 10(5) has effect as if 'to imprisonment for a term not exceeding three months or' were inserted after 'conviction': Sch 22 paras 10(6), 11(2).

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## 29. Power to control prices.

The Secretary of State<sup>1</sup> may, after consultation with the industry body<sup>2</sup> limit any price which may be charged by any manufacturer or supplier for the supply of any health service medicine<sup>3</sup>, and provide for any amount representing sums charged by that person for that medicine in excess of the limit to be paid to the Secretary of State within a specified period<sup>4</sup>. The powers conferred by this provision are not exercisable at any time in relation to a manufacturer or supplier to whom at that time a voluntary scheme applies<sup>5</sup>.

The Secretary of State may, after consultation with the industry body, make any provision he considers necessary or expedient for the purpose of enabling or facilitating the introduction of a price limit under these provisions<sup>6</sup>. The provision may, in particular, require any person to whom such a limit may apply to record and keep information<sup>7</sup>, and provide information to the Secretary of State<sup>8</sup>.

The powers set out above do not affect any other powers of the Secretary of State to control prices or profits<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8. The National Health Service Act 2006 ss 262, 264, 266 apply to both England And Wales: see PARA 27 note 1.

2 'Industry body' means any body which appears to the Secretary of State appropriate to represent manufacturers and suppliers: National Health Service Act 2006 s 266(6). 'Manufacturer' means any person who manufactures health service medicines, and 'manufacture' includes assemble: s 266(6). 'Health service medicine' means a medicinal product used to any extent for the purposes of the health service; and 'medicinal product' has the meaning given by the Medicines Act 1968 s 130 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 7): National Health Service Act 2006 s 266(6). 'Supplier' means any person who supplies health service medicines, and 'supplying' medicines includes selling them: s 266(6). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'health service' see PARA 10 note 3. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

3 National Health Service Act 2006 s 262(1)(a). The power to impose a limit under s 262(1)(a) is exercisable only with a view to limiting by reference to the prices or profits which would be reasonable in all the circumstances, the prices which may be charged for or the profits which may accrue to any manufacturer or supplier in connection with the manufacture or supply for the purposes of the health service of health service medicines: s 266(3). In so exercising the power the Secretary of State and any other person must bear in mind, in particular: (1) the need for medicinal products to be available for the health service on reasonable terms (s 266(4)(a)); and (2) the costs of research and development (s 266(4)(b)).

4 National Health Service Act 2006 s 262(1)(b). As to the enforcement of these provisions see PARA 32.

5 National Health Service Act 2006 s 262(2). As to voluntary schemes see PARA 31. Any power conferred on the Secretary of State by ss 262, 264 (see the text to notes 6-8) may be exercised by making regulations, or giving directions to a specific manufacturer or supplier: s 266(1). Such regulations may confer power for the Secretary of State to give directions to a specific manufacturer or supplier; and in this context 'specific' means specified in the direction concerned: s 266(2). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations and directions generally see PARA 9. The Health Service Medicines (Information Relating to Sales of Branded Medicines etc) Regulations 2007, SI 2007/1320, have been made.

6 National Health Service Act 2006 s 264(1)(a). See also note 5.

7 National Health Service Act 2006 s 264(2)(a).

8 National Health Service Act 2006 s 264(2)(b).

9 National Health Service Act 2006 s 266(5). As to the powers to control prices and profits under competition law see **COMPETITION** vol 18 (2009) PARA 377 et seq.

## **UPDATE**

### **29-32 Power to control prices ... Enforcement of price controls**

The maximum price which may be charged for the supply of a presentation is the price at which that presentation was on sale for health service purposes in England on 1 December 2008 less 3.9 per cent but without regard to any discount or other variation of the price which did not have general application on that date: Health Service Branded Medicines (Control of Prices and Supply of Information) (No 2) Regulations 2008, SI 2008/3258, reg 2(1). 'Supply' means supply by way of sale; 'presentation' means a particular form of a relevant medicine which may be distinguished from other forms of the medicine by reference to its active ingredients and excipients, pack size, type of packaging, clinical indications or indicated method of administration for use in clinical practice; 'relevant medicine' means a medicine which is both a prescription only medicine and a branded health service medicine: reg 1(2). Regulation 2 does not apply to a manufacturer or supplier to whom a voluntary scheme for the supply of branded health service medicine applies at the time of a supply or where the maximum price of a presentation is determined by regs 3-9, Schedule: reg 2(3). Where a presentation was not on sale in England for health service purposes on 1 December 2008, the Secretary of State may specify the maximum price at which that presentation may be supplied for the purposes of the health service by a direction to a specific manufacturer or supplier: see reg 3. The maximum price which may be charged for a low cost presentation is the price at which that presentation was on sale for health service purposes in England on 1 December 2008 without regard to any discount or other variation of the price which did not have general application on that date: see reg 4. The Secretary of State may exempt for such period as he may determine a presentation from the effect of regs 2, 3 or 4 where he considers that an exemption is necessary to ensure adequate supplies of that presentation for health service purposes: see reg 5. The Secretary of State may either on his own motion or on application by a specific manufacturer or supplier increase the maximum price of a presentation by direction to a specific manufacturer or supplier: see reg 6. Any manufacturer or supplier who supplies a presentation for health service purposes at a price in excess of the maximum permitted is liable on the demand of the Secretary of State, to pay to him a recoverable sum: see reg 7, Schedule. Any manufacturer or supplier of a presentation in respect of whom the Secretary of State has made an enforcement decision under the regulations has a right of appeal against that decision in accordance with regulations made under the National Health Service Act 2006 s 265(5): see SI 2008/3258 reg 9.

### **29 Power to control prices**

NOTE 5--SI 2007/1320 amended: SI 2008/3258.

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### **30. Statutory schemes.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> may, after consultation with the industry body<sup>3</sup>, make a statutory scheme for the purpose of: (1) limiting the prices which may be charged by any manufacturer<sup>4</sup> or supplier<sup>5</sup> for the supply of any health service medicines<sup>6</sup>; or (2) limiting the profits which may accrue to any manufacturer or supplier in connection with the manufacture or supply of any health service medicines<sup>7</sup>. A statutory scheme may, in particular, make any provision as follows<sup>8</sup>: (a) require any manufacturer or supplier to whom it applies to record and keep information<sup>9</sup> and provide information to the Secretary of State<sup>10</sup>; (b) provide for any amount representing sums charged by any manufacturer or supplier to whom the scheme applies, in excess of the limits determined under the scheme, for health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period<sup>11</sup>; (c) provide for any amount representing the profits, in excess of the limits determined under the scheme, accruing to any manufacturer or supplier to whom the scheme applies in connection with the manufacture or supply of health service medicines covered by the scheme to be paid by that person to the Secretary of State within a specified period<sup>12</sup>; (d) prohibit any manufacturer or supplier to whom the scheme applies from increasing, without the approval of the Secretary of State, any price charged by him for the supply of any health service medicine covered by the scheme<sup>13</sup>, and provide for any amount representing any increase in contravention<sup>14</sup> of that prohibition in the sums charged by that person for that medicine, so far as the increase is attributable to supplies to the health service, to be paid to the Secretary of State within a specified period<sup>15</sup>. A statutory scheme may not apply to a manufacturer or supplier to whom a voluntary scheme applies<sup>16</sup>.

The Secretary of State may, after consultation with the industry body, make any provision he considers necessary or expedient for the purpose of enabling or facilitating the introduction of a statutory scheme<sup>17</sup> or the determination of the provision to be made in a proposed statutory scheme<sup>18</sup>. The provision may, in particular, require any person to whom such a scheme may apply to record and keep information<sup>19</sup>, and provide information to the Secretary of State<sup>20</sup>.

The powers set out above do not affect any other powers of the Secretary of State to control prices or profits<sup>21</sup>.

1 The National Health Service Act 2006 ss 263, 266 (in so far as it relates to s 263) do not come into force until, and to the extent that the Health Act 1999 ss 35, 38 (in so far as they relate to s 35) are brought into force: see the National Health Service Act 2006 s 277(3)(a), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 1999 ss 35, 38 (in so far as they relate to s 35) are repealed but such repeal does not take effect until ss 35, 38 (in so far as they relate to s 35) are brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(a), (5), (6). The National Health Service Act 2006 s 266(5) is in force by virtue of the Health Act s 38(5) having come into force: see the Health Act 1999 (Commencement No 1) Order 1999, SI 1999/2177, art 2(4)(a). The remaining provisions of the Health Act 1999 ss 33, 38 come into force on such day as the Secretary of State may by order appoint: s 67(1). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 6 note 8. The National Health Service Act 2006 ss 263, 264, 266 apply to both England And Wales: see PARA 27 note 1. Any power conferred on the Secretary of State by the National Health Service Act 2006 s 263 may be exercised by making regulations, or giving directions to a specific manufacturer or supplier: s 266(1). Such regulations may confer power for the Secretary of State to give directions to a specific manufacturer or supplier; and in this context 'specific' means specified in the

direction concerned: s 266(2). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations and directions generally see PARA 9.

3 As to the meaning of 'industry body' see PARA 29 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

4 As to the meanings of 'manufacturer' and 'manufacture' see PARA 29 note 2.

5 As to the meanings of 'supplier' and 'supply' see PARA 29 note 2.

6 National Health Service Act 2006 s 263(1)(a). The powers to impose a limit under s 263(1) or to refuse approval under s 263(6)(a) (see the text to note 13) are exercisable only with a view to limiting, by reference to the prices or profits which would be reasonable in all the circumstances, the prices which may be charged for, or the profits which may accrue to any manufacturer or supplier in connection with, the manufacture or supply for the purposes of the health service of health service medicines: s 266(3). In so exercising those powers the Secretary of State and any other person must bear in mind, in particular: (1) the need for medicinal products to be available for the health service on reasonable terms (s 266(4)(a)); and (2) the costs of research and development (s 266(4)(b)). As to the meaning of 'health service' see PARA 10 note 3. As to the meanings of 'health service medicine' and 'medicinal product' see PARA 29 note 2. As to the meaning of 'person' see PARA 17 note 2.

7 National Health Service Act 2006 s 263(1)(b). As to the enforcement of statutory schemes see PARA 32.

8 National Health Service Act 2006 s 263(2).

9 National Health Service Act 2006 s 263(3)(a).

10 National Health Service Act 2006 s 263(3)(b).

11 National Health Service Act 2006 s 263(4).

12 National Health Service Act 2006 s 263(5).

13 National Health Service Act 2006 s 263(6)(a). See also note 6.

14 'Contravention' of a provision includes a failure to comply with it: National Health Service Act 2006 s 266(6).

15 National Health Service Act 2006 s 263(6)(b).

16 National Health Service Act 2006 s 263(7). As to voluntary schemes see PARA 31.

17 National Health Service Act 2006 s 264(1)(a). Where the Secretary of State is preparing to make or vary a statutory scheme, he may make any provision he considers necessary or expedient for transitional or transitory purposes which could be made by such a scheme: s 264(3).

18 National Health Service Act 2006 s 264(1)(b).

19 National Health Service Act 2006 s 264(2)(a).

20 National Health Service Act 2006 s 264(2)(b).

21 National Health Service Act 2006 s 266(5). As to the powers to control prices and profits under competition law see **COMPETITION** vol 18 (2009) PARA 377 et seq.

## UPDATE

### 29-32 Power to control prices ... Enforcement of price controls

The maximum price which may be charged for the supply of a presentation is the price at which that presentation was on sale for health service purposes in England on 1 December 2008 less 3.9 per cent but without regard to any discount or other variation of the price which did not have general application on that date: Health Service Branded Medicines (Control of Prices and Supply of Information) (No 2) Regulations 2008, SI 2008/3258, reg 2(1). 'Supply' means supply by way of sale; 'presentation'



means a particular form of a relevant medicine which may be distinguished from other forms of the medicine by reference to its active ingredients and excipients, pack size, type of packaging, clinical indications or indicated method of administration for use in clinical practice; 'relevant medicine' means a medicine which is both a prescription only medicine and a branded health service medicine: reg 1(2). Regulation 2 does not apply to a manufacturer or supplier to whom a voluntary scheme for the supply of branded health service medicine applies at the time of a supply or where the maximum price of a presentation is determined by regs 3-9, Schedule: reg 2(3). Where a presentation was not on sale in England for health service purposes on 1 December 2008, the Secretary of State may specify the maximum price at which that presentation may be supplied for the purposes of the health service by a direction to a specific manufacturer or supplier: see reg 3. The maximum price which may be charged for a low cost presentation is the price at which that presentation was on sale for health service purposes in England on 1 December 2008 without regard to any discount or other variation of the price which did not have general application on that date: see reg 4. The Secretary of State may exempt for such period as he may determine a presentation from the effect of regs 2, 3 or 4 where he considers that an exemption is necessary to ensure adequate supplies of that presentation for health service purposes: see reg 5. The Secretary of State may either on his own motion or on application by a specific manufacturer or supplier increase the maximum price of a presentation by direction to a specific manufacturer or supplier: see reg 6. Any manufacturer or supplier who supplies a presentation for health service purposes at a price in excess of the maximum permitted is liable on the demand of the Secretary of State, to pay to him a recoverable sum: see reg 7, Schedule. Any manufacturer or supplier of a presentation in respect of whom the Secretary of State has made an enforcement decision under the regulations has a right of appeal against that decision in accordance with regulations made under the National Health Service Act 2006 s 265(5): see SI 2008/3258 reg 9.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/B. PRICE OF MEDICAL SUPPLIES/31. Voluntary schemes of price control.

### **31. Voluntary schemes of price control.**

The following powers may be exercised where there is in existence a scheme (known as a 'voluntary scheme') made by the Secretary of State<sup>1</sup> and the industry body<sup>2</sup> for the purpose of: (1) limiting the prices which may be charged by any manufacturer<sup>3</sup> or supplier<sup>4</sup> to whom the scheme relates for the supply of any health service medicines<sup>5</sup>; or (2) limiting the profits which may accrue to any manufacturer or supplier to whom the scheme relates in connection with the manufacture<sup>6</sup> or supply of any health service medicines<sup>7</sup>. A voluntary scheme must be treated<sup>8</sup> as applying to a manufacturer or supplier to whom it relates if he has consented to the scheme being so treated (and has not withdrawn that consent)<sup>9</sup>, and no notice<sup>10</sup> is in force disapplying the scheme in his case<sup>11</sup>. A voluntary scheme has effect, in relation to a manufacturer or supplier to whom it applies, with any additions or modifications made by him and the Secretary of State<sup>12</sup>.

If any acts or omissions of a scheme member<sup>13</sup> have shown that, in the scheme member's case, the scheme is ineffective for either of the purposes mentioned in head (1) or (2) above, the Secretary of State may by a written<sup>14</sup> notice given to the scheme member determine that the scheme does not apply to him<sup>15</sup>.

The Secretary of State may after consultation<sup>16</sup> with the industry body require any manufacturer or supplier to whom a voluntary scheme applies to record and keep any information<sup>17</sup>, and provide any information to the Secretary of State<sup>18</sup>, which the Secretary of State may require for the purpose of enabling the scheme to operate or facilitating its operation<sup>19</sup>.

As from a day to be appointed the following provision has effect<sup>20</sup>. The Secretary of State may prohibit any manufacturer or supplier to whom a voluntary scheme applies from increasing any price charged by him for the supply of any health service medicine covered by the scheme without the approval of the Secretary of State<sup>21</sup>, and provide for any amount representing any increase in contravention<sup>22</sup> of that prohibition in the sums charged by that person<sup>23</sup> for that medicine, so far as the increase is attributable to supplies to the health service<sup>24</sup>, to be paid to the Secretary of State within a specified period<sup>25</sup>.

These powers do not affect any other powers of the Secretary of State to control prices or profits<sup>26</sup>.

1 As to the Secretary of State see PARA 6 note 8. The National Health Service Act 2006 ss 261, 266 apply to both England and Wales: see PARA 27 note 1.

2 As to the meaning of 'industry body' see PARA 29 note 2.

3 As to the meaning of 'manufacturer' see PARA 29 note 2.

4 As to the meanings of 'supplier' and 'supply' see PARA 29 note 2.

5 National Health Service Act 2006 s 261(1)(a). As to the meaning of 'health service medicine' see PARA 29 note 2. The National Health Service Act 2006 ss 261, 266 do not come into force until, and to the extent that the Health Act 1999 ss 33, 38 are brought into force: see the National Health Service Act 2006 s 277(3)(a), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 1999 ss 33, 38 are repealed but such repeal does not take effect until, and to the extent that, ss 33, 38 are brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(a), (5), (6). The National Health Service Act 2006 s 261(1)-(7) (except in the case of s 261(7) in relation to s 261(8)) is in force by virtue of the Health Act 1999 s 33(1)-(7) (repealed) having come into force: see the Health Act 1999 (Commencement

No 1) Order 1999, SI 1999/2177, art 2(3)(a); Health Act 1999 (Commencement No 16) Order 2007, SI 2007/1179, art 2(a). The National Health Service Act 2006 s 266 is in force (except in relation to s 261(8)) by virtue of the Health Act s 38 having come into force (except in relation to s 33(8)): see the Health Act 1999 (Commencement No 1) Order 1999, SI 1999/2177, art 2(3)(b), (4)(a); Health Act 1999 (Commencement No 16) Order 2007, SI 2007/1179, art 2(c). The remaining provisions of the Health Act 1999 ss 33, 38 come into force on such day as the Secretary of State may by order appoint: s 67(1). At the date at which this volume states the law no such day had been appointed.

6 As to the meaning of 'manufacture' see PARA 29 note 2.

7 National Health Service Act 2006 s 261(1)(b). As to the enforcement of these provisions see PARA 32.

8 le for the purposes of the National Health Service Act 2006 s 261 (see PARA 31), s 262 (see PARA 29) and s 263 (see PARA 30).

9 National Health Service Act 2006 s 261(2)(a). Consent must be given, or withdrawn, in the manner required by the Secretary of State: s 261(6). As to the giving and withdrawal of consent see the Health Service Medicines (Consent to Voluntary Scheme) Regulations 1999, SI 1999/2229, which by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) are deemed to have effect under the National Health Service Act 2006 s 261(6). See also note 19.

10 le under the National Health Service Act 2006 s 261(4): see the text to notes 13-15.

11 National Health Service Act 2006 s 261(2)(b). A voluntary scheme is not a purely non-binding and voluntary agreement with no intention to create legal relations but constitutes a commercial contract between the Secretary of State and the manufacturers and suppliers who are parties to it: *Glaxosmithkline UK Ltd v Department of Health* [2007] EWHC 1470 (Comm), [2007] 2 All ER (Comm) 1140. As to decisions relating to the operation and interpretation of voluntary schemes see *Glaxosmithkline UK Ltd v Department of Health; R (on the application of Association of Pharmaceutical Importers) v Secretary of State for Health* [2001] EWCA Civ 2047, [2001] All ER (D) 261 (Dec); *R v Secretary of State for Health, ex p British Association of European Pharmaceutical Distributors* [2001] EWHC (Admin) 183, [2001] EuLR 464.

12 National Health Service Act 2006 s 261(3).

13 le any manufacturer or supplier to whom a voluntary scheme applies: National Health Service Act 2006 s 261(4).

14 As to the meaning of 'written' see PARA 7 note 2.

15 National Health Service Act 2006 s 261(4). A notice under s 261(4) must give the Secretary of State's reasons for giving the notice, and the Secretary of State may not give such a notice until he has given the scheme member an opportunity to make representations about the acts or omissions in question: s 261(5).

16 As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

17 National Health Service Act 2006 s 261(7)(a).

18 National Health Service Act 2006 s 261(7)(b).

19 National Health Service Act 2006 s 261(7). As from a day to be appointed s 261(7) applies also for the purpose of giving full effect to any provision made under s 261(8) (see the text to notes 20-25): see s 261(7) (not yet in force for these purposes: see note 5). Any power conferred on the Secretary of State by s 261(6) (see note 9), (7), or s 261(8) may be exercised by making regulations, or giving directions to a specific manufacturer or supplier: s 266(1). Such regulations may confer power for the Secretary of State to give directions to a specific manufacturer or supplier; and in this context 'specific' means specified in the direction concerned: s 266(2). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations and directions see PARA 9. The Health Service Medicines (Information Relating to Sales of Branded Medicines etc) Regulations 2007, SI 2007/1320, have been made.

20 See note 5.

21 National Health Service Act 2006 s 261(8)(a) (not yet in force).

22 As to the meaning of 'contravention' see PARA 30 note 14.

23 As to the meaning of 'person' see PARA 17 note 2.

24 As to the meaning of 'health service' see PARA 10 note 3.

25 National Health Service Act 2006 s 261(8)(b) (not yet in force). See also note 19.

26 National Health Service Act 2006 s 266(5). As to the powers to control prices and profits under competition law see **COMPETITION** vol 18 (2009) PARA 377 et seq.

## **UPDATE**

### **29-32 Power to control prices ... Enforcement of price controls**

The maximum price which may be charged for the supply of a presentation is the price at which that presentation was on sale for health service purposes in England on 1 December 2008 less 3·9 per cent but without regard to any discount or other variation of the price which did not have general application on that date: Health Service Branded Medicines (Control of Prices and Supply of Information) (No 2) Regulations 2008, SI 2008/3258, reg 2(1). 'Supply' means supply by way of sale; 'presentation' means a particular form of a relevant medicine which may be distinguished from other forms of the medicine by reference to its active ingredients and excipients, pack size, type of packaging, clinical indications or indicated method of administration for use in clinical practice; 'relevant medicine' means a medicine which is both a prescription only medicine and a branded health service medicine: reg 1(2). Regulation 2 does not apply to a manufacturer or supplier to whom a voluntary scheme for the supply of branded health service medicine applies at the time of a supply or where the maximum price of a presentation is determined by regs 3-9, Schedule: reg 2(3). Where a presentation was not on sale in England for health service purposes on 1 December 2008, the Secretary of State may specify the maximum price at which that presentation may be supplied for the purposes of the health service by a direction to a specific manufacturer or supplier: see reg 3. The maximum price which may be charged for a low cost presentation is the price at which that presentation was on sale for health service purposes in England on 1 December 2008 without regard to any discount or other variation of the price which did not have general application on that date: see reg 4. The Secretary of State may exempt for such period as he may determine a presentation from the effect of regs 2, 3 or 4 where he considers that an exemption is necessary to ensure adequate supplies of that presentation for health service purposes: see reg 5. The Secretary of State may either on his own motion or on application by a specific manufacturer or supplier increase the maximum price of a presentation by direction to a specific manufacturer or supplier: see reg 6. Any manufacturer or supplier who supplies a presentation for health service purposes at a price in excess of the maximum permitted is liable on the demand of the Secretary of State, to pay to him a recoverable sum: see reg 7, Schedule. Any manufacturer or supplier of a presentation in respect of whom the Secretary of State has made an enforcement decision under the regulations has a right of appeal against that decision in accordance with regulations made under the National Health Service Act 2006 s 265(5): see SI 2008/3258 reg 9.

### **31 Voluntary schemes of price control**

NOTE 19--SI 2007/1320 amended: SI 2008/3258.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/B. PRICE OF MEDICAL SUPPLIES/32. Enforcement of price controls.

### **32. Enforcement of price controls.**

Regulations<sup>1</sup> may provide for a person<sup>2</sup> who contravenes<sup>3</sup> any provision of regulations or directions under the provisions relating to the control of prices of health service medicines<sup>4</sup> to be liable to pay a penalty to the Secretary of State<sup>5</sup>. The penalty may be a single penalty not exceeding £100,000<sup>6</sup>, or a daily penalty not exceeding £10,000 for every day on which the contravention occurs or continues<sup>7</sup>. The Secretary of State may by order increase (or further increase) either of these sums<sup>8</sup>. Provision may be made by regulations for conferring on manufacturers and suppliers<sup>9</sup> a right of appeal against enforcement decisions<sup>10</sup> taken<sup>11</sup> in respect of them<sup>12</sup>. Before making any regulations under these provisions, the Secretary of State must consult the industry body<sup>13</sup>.

A requirement or prohibition, or a limit, under the provisions relating to the control of prices of health service medicines<sup>14</sup>, may only be enforced under the above provisions<sup>15</sup> and may not be relied on in any proceedings other than proceedings under those provisions<sup>16</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. The Health Service Medicines (Information Relating to Sales of Branded Medicines etc) Regulations 2007, SI 2007/1320, have been made under the National Health Service Act 2006 s 265.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to the meaning of 'contravention' see PARA 30 note 14.

4 I.e the National Health Service Act 2006 ss 261-264: see PARAS 29-31. As to the meaning of 'health service medicine' see PARA 29 note 2.

5 National Health Service Act 2006 s 265(1). As to the Secretary of State see PARA 6 note 8. Section 265 applies to both England And Wales: see PARA 27 note 1.

6 National Health Service Act 2006 s 265(2)(a).

7 National Health Service Act 2006 s 265(2)(b). Regulations may provide: (1) for any amount required to be paid to the Secretary of State by virtue of s 261(8)(b) (see PARA 31), s 262(1)(b) (see PARA 29) or s 263(4) or (6) (b) (see PARA 30) to be increased by an amount not exceeding 50% (s 265(3)); (2) for any amount payable to the Secretary of State by virtue of provision made under s 261(8)(b), 262(1)(b) or 263(4), (5) or (6)(b) (including such an amount as increased under s 265(3)) to carry interest at a rate specified or referred to in the regulations (s 265(4)).

8 National Health Service Act 2006 s 265(10). As to the making of orders see PARA 9.

9 As to the meanings of 'manufacturers' and 'suppliers' see PARA 29 note 2.

10 'Enforcement decision' means a decision of the Secretary of State or any other person to: (1) require a specific manufacturer or supplier to provide information to him (National Health Service Act 2006 s 265(7)(a)); (2) limit, in respect of any specific manufacturer or supplier, any price or profit (s 265(7)(b)); (3) refuse to give his approval to a price increase made by a specific manufacturer or supplier (s 265(7)(c)); (4) require a specific manufacturer or supplier to pay any amount (including an amount by way of penalty) to him (s 265(7)(d)); and in this context 'specific' means specified in the decision (s 265(7)).

11 I.e in pursuance of the National Health Service Act 2006 ss 261-264 (see PARAS 29-31) and s 265.

12 National Health Service Act 2006 s 265(5). The provision which may be made by virtue of s 265(5) includes any provision which may be made by model provisions with respect to appeals under the Deregulation and Contracting Out Act 1994 s 6, reading the references in s 6(4) and (5) to enforcement action as references to action taken to implement an enforcement decision, and the references in s 6(5) to interested persons as

references to any persons and the reference to any decision to take enforcement action as a reference to any enforcement decision: National Health Service Act 2006 s 265(6). The Health Service Medicines (Price Control Appeals) Regulations 2000, SI 2000/124, are deemed by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), to have effect under the National Health Service Act 2006 s 265(5).

13 National Health Service Act 2006 s 265(9). As to the meaning of 'industry body' see PARA 29 note 2.

14 Ie the National Health Service Act 2006 ss 261-264: see PARAS 29-31.

15 Ie under the National Health Service Act 2006 s 265.

16 National Health Service Act 2006 s 265(8).

## **UPDATE**

### **29-32 Power to control prices ... Enforcement of price controls**

The maximum price which may be charged for the supply of a presentation is the price at which that presentation was on sale for health service purposes in England on 1 December 2008 less 3.9 per cent but without regard to any discount or other variation of the price which did not have general application on that date: Health Service Branded Medicines (Control of Prices and Supply of Information) (No 2) Regulations 2008, SI 2008/3258, reg 2(1). 'Supply' means supply by way of sale; 'presentation' means a particular form of a relevant medicine which may be distinguished from other forms of the medicine by reference to its active ingredients and excipients, pack size, type of packaging, clinical indications or indicated method of administration for use in clinical practice; 'relevant medicine' means a medicine which is both a prescription only medicine and a branded health service medicine: reg 1(2). Regulation 2 does not apply to a manufacturer or supplier to whom a voluntary scheme for the supply of branded health service medicine applies at the time of a supply or where the maximum price of a presentation is determined by regs 3-9, Schedule: reg 2(3). Where a presentation was not on sale in England for health service purposes on 1 December 2008, the Secretary of State may specify the maximum price at which that presentation may be supplied for the purposes of the health service by a direction to a specific manufacturer or supplier: see reg 3. The maximum price which may be charged for a low cost presentation is the price at which that presentation was on sale for health service purposes in England on 1 December 2008 without regard to any discount or other variation of the price which did not have general application on that date: see reg 4. The Secretary of State may exempt for such period as he may determine a presentation from the effect of regs 2, 3 or 4 where he considers that an exemption is necessary to ensure adequate supplies of that presentation for health service purposes: see reg 5. The Secretary of State may either on his own motion or on application by a specific manufacturer or supplier increase the maximum price of a presentation by direction to a specific manufacturer or supplier: see reg 6. Any manufacturer or supplier who supplies a presentation for health service purposes at a price in excess of the maximum permitted is liable on the demand of the Secretary of State, to pay to him a recoverable sum: see reg 7, Schedule. Any manufacturer or supplier of a presentation in respect of whom the Secretary of State has made an enforcement decision under the regulations has a right of appeal against that decision in accordance with regulations made under the National Health Service Act 2006 s 265(5): see SI 2008/3258 reg 9.

### **32 Enforcement of price controls**

NOTE 19--SI 2007/1320 amended: SI 2008/3258.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/C. PROVISION OF SPECIFIC SERVICES BY THE SECRETARY OF STATE/33. Medical inspection of pupils.

### ***C. PROVISION OF SPECIFIC SERVICES BY THE SECRETARY OF STATE***

#### **33. Medical inspection of pupils.**

The Secretary of State<sup>1</sup> must provide for the medical<sup>2</sup> inspection at appropriate intervals of pupils<sup>3</sup> in attendance at schools<sup>4</sup> maintained by local education authorities<sup>5</sup> and for the medical treatment of such pupils<sup>6</sup>. The Secretary of State may<sup>7</sup>: (1) by arrangement with any local education authority, provide for any medical inspection or treatment of senior pupils<sup>8</sup> in attendance at any educational establishment, other than a school, which is maintained by the authority and at which full-time further education is provided<sup>9</sup>, or any child<sup>10</sup> or young person<sup>11</sup> who<sup>12</sup> is receiving primary or secondary education<sup>13</sup> otherwise than at a school<sup>14</sup>; (2) by arrangement with the proprietor<sup>15</sup> of any educational establishment which is not maintained by a local education authority, provide for any medical inspection or treatment of junior or senior pupils in attendance at the establishment<sup>16</sup>. Any charge made under regulations<sup>17</sup> in respect of the supply of drugs, medicines<sup>18</sup> or appliances must be disregarded for these purposes<sup>19</sup>.

Each local education authority, in respect of the schools which it maintains<sup>20</sup>, or each governing body of a foundation, voluntary or foundation special school, in respect of the school<sup>21</sup>, must make available to the Secretary of State such accommodation as is appropriate for the purpose of assisting him to make provision<sup>22</sup> for medical inspection and treatment in relation to the pupils in attendance at the schools or school in question<sup>23</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 Sch 1 paras 1-7 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 1 para 1-7.

2 As to the meaning of 'medical' see PARA 10 note 5.

3 As to the meaning of 'pupil' see **EDUCATION** vol 15(1) (2006 Reissue) PARA 16: definition applied by the National Health Service Act 2006 Sch 1 para 6.

4 As to the meaning of 'school' see **EDUCATION** vol 15(1) (2006 Reissue) PARA 81: definition applied by the National Health Service Act 2006 Sch 1 para 6.

5 As to the meaning of 'local education authority' see **EDUCATION** vol 15(1) (2006 Reissue) PARA 20: definition applied by the National Health Service Act 2006 Sch 1 para 6.

6 National Health Service Act 2006 Sch 1 para 1. A local education authority must make arrangements for encouraging and assisting pupils to take advantage of such provision for medical inspection and treatment: see the Education Act 1996 s 520(1) (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 181, 184); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 554.

7 The provisions of the National Health Service Act 2006 Sch 1 para 2(1) and (2) (see the text to notes 8-16) do not affect the Secretary of State's powers apart from those provisions: Sch 1 para 2(3).

8 'Senior pupil' means a person who has attained the age of 12 but not the age of 19: Education Act 1996 s 3(2); definition applied by the National Health Service Act 2006 Sch 1 para 6.

9 National Health Service Act 2006 Sch 1 para 2(1)(a). A local education authority may not make an arrangement under Sch 1 para 2(1)(a) unless the governing body of the educational establishment agrees to the arrangement: Sch 1 para 4. As to the meaning of 'further education' see **EDUCATION** vol 15(1) (2006 Reissue) PARA 18: definition applied by Sch 1 para 6.



10 'Child' means a person who is not over compulsory school age: Education Act 1996 s 579(1); definition applied by the National Health Service Act 2006 Sch 1 para 6. As to the meaning of 'compulsory school age' see **EDUCATION** vol 15(1) (2006 Reissue) PARA 15: definition as so applied.

11 'Young person' means a person over compulsory school age but under the age of 18: Education Act 1996 s 579(1); definition applied by the National Health Service Act 2006 Sch 1 para 6.

12 Ie in pursuance of the Education Act 1996 s 19 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 457) or s 319 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1011).

13 As to the meaning of 'primary education' see **EDUCATION** vol 15(1) (2006 Reissue) PARA 16; and as to the meaning of 'secondary education' see **EDUCATION** vol 15(1) (2006 Reissue) PARA 17: definitions applied by the National Health Service Act 2006 Sch 1 para 6.

14 National Health Service Act 2006 Sch 1 para 2(1)(b). See also note 7.

15 'Proprietor', in relation to a school, means the person or body of persons responsible for the management of the school: see the Education Act 1996 s 579(1). As to the meaning of 'person' see PARA 17 note 2.

16 National Health Service Act 2006 Sch 1 para 2(2). Such an arrangement may provide for payments by the proprietor in question: Sch 1 para 3. This provision as drafted refers to an arrangement under Sch 1 para 2(1)(b) but as it refers to 'the proprietor' to whom reference is made in Sch 1 para 2(2) it is submitted that this is a drafting error and it should refer to Sch 1 para 2(2). See also note 7.

17 Ie regulations made under the National Health Service Act 2006. As to the meaning of 'regulations' see PARA 7 note 2.

18 As to the meaning of 'medicine' see PARA 339 note 4.

19 National Health Service Act 2006 Sch 1 para 7. As to regulations in respect of charges see PARA 469.

20 Ie other than foundation, voluntary or foundation special schools: National Health Service Act 2006 Sch 1 para 5(1)(a). As to foundation, voluntary or foundation special schools see **EDUCATION** vol 15(1) (2006 Reissue) PARA 102 et seq.

21 National Health Service Act 2006 Sch 1 para 5(1)(b).

22 Ie under the National Health Service Act 2006 Sch 1 para 1: see the text to notes 1-6.

23 National Health Service Act 2006 Sch 1 para 5(2).

## **UPDATE**

### **33 Medical inspection of pupils**

TEXT AND NOTES--The Secretary of State may make arrangements for the weighing and measuring of children under the age of 12 who attend school or early years settings, and may make regulations relating to such weighing and measuring of children: see the National Health Service Act 2006 Sch 1 paras 7A, 7B (added by Health and Social Care Act 2008 s 143). In exercise of the powers so conferred on him the Secretary of State has made the National Child Measurement Programme Regulations 2008, SI 2008/3080, which apply to children attending school.

NOTE 1--National Health Service (Wales) Act 2006 Sch 1 para 3 amended: Health and Social Care Act 2008 Sch 14 para 7.

NOTE 16--National Health Service Act 2006 Sch 1 para 3 amended: Health and Social Care Act 2008 Sch 14 para 6.

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### **34. Contraceptive services.**

The Secretary of State<sup>1</sup> must arrange, to such extent as he considers necessary to meet all reasonable requirements, for: (1) the giving of advice on contraception<sup>2</sup>; (2) the medical<sup>3</sup> examination of persons seeking advice on contraception<sup>4</sup>; (3) the treatment of such persons<sup>5</sup>; and (4) the supply of contraceptive substances and appliances<sup>6</sup>.

A contractor under a general medical services contract<sup>7</sup> whose contract includes the provision of contraceptive services must make available to all its patients who request such services<sup>8</sup> the prescribed services<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 Sch 1 para 8 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 1 para 8. As to the meaning of 'Wales' see PARA 6 note 2.

2 National Health Service Act 2006 Sch 1 para 8(a).

3 As to the meaning of 'medical' see PARA 10 note 5.

4 National Health Service Act 2006 Sch 1 para 8(b).

5 National Health Service Act 2006 Sch 1 para 8(c).

6 National Health Service Act 2006 Sch 1 para 8(d). As to charges for the supply under this provision of contraceptive substances and appliances see s 172(2); and PARA 469.

7 As to general medical services contracts see PARA 242 et seq.

8 There is no statutory limit on the age of the persons to whom contraceptive facilities might be supplied. Such services may be provided to a girl under the age of 16 years without the consent or even knowledge of her parents if she has sufficient maturity and intelligence to understand the nature and implications of the proposed treatment and a doctor considers such treatment to be in her own best interests: *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, [1985] 3 All ER 402, HL.

9 See the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, reg 16, Sch 2 para 3(1). The prescribed services are: (1) the giving of advice about the full range of contraceptive methods; (2) where appropriate, the medical examination of patients seeking such advice; (3) the treatment of such patients for contraceptive purposes and the prescribing of contraceptive substances and appliances (excluding the fitting and implanting of intrauterine devices and implants); (4) the giving of advice about emergency contraception and where appropriate, the supplying or prescribing of emergency hormonal contraception or, where the contractor has a conscientious objection to emergency contraception, prompt referral to another provider of primary medical services who does not have such conscientious objections; (5) the provision of advice and referral in cases of unplanned or unwanted pregnancy, including advice about the availability of free pregnancy testing in the practice area and, where appropriate, where the contractor has a conscientious objection to the termination of pregnancy, prompt referral to another provider of primary medical services who does not have such conscientious objections; (6) the giving of initial advice about sexual health promotion and sexually transmitted infections; and (7) the referral as necessary for specialist sexual health services, including tests for sexually transmitted infections: Sch 2 para 3(2). The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478. As to the meaning of 'England' see PARA 6 note 2. As to primary medical services see PARA 241.

### **UPDATE**

### **34 Contraceptive services**

TEXT AND NOTES 1-6--The Secretary of State may make direct payments to a patient or his nominee for the purpose of securing the provision of services under the National Health Service Act 2006 Sch 1 para 8: see the National Health Service Act 2006 ss 12A-12D (added by Health Act 2009 s 11); and PARA 12A.

NOTE 9--SI 2004/478 amended: SI 2008/1329, SI 2008/1425, SI 2009/462, SI 2010/729.

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### **35. Provision of vehicles for disabled persons.**

The Secretary of State<sup>1</sup> may provide vehicles (including wheelchairs) for persons appearing to him to be persons who have a physical impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities<sup>2</sup>.

In respect of a vehicle so provided<sup>3</sup>, and a vehicle belonging to such a person<sup>4</sup>, the Secretary of State may: (1) adapt the vehicle to make it suitable for the circumstances of the person in question<sup>5</sup>; (2) maintain and repair the vehicle<sup>6</sup>; (3) take out insurance policies relating to the vehicle and pay any duty<sup>7</sup> with which the vehicle is chargeable<sup>8</sup>; (4) provide a structure in which the vehicle may be kept, and provide all material and execute all works necessary to erect the structure<sup>9</sup>. The Secretary of State may make payments by way of grant towards costs incurred by a physically impaired person<sup>10</sup> in respect of any of certain matters in relation to the vehicle<sup>11</sup>. These powers<sup>12</sup> may be exercised on such terms and subject to such conditions as the Secretary of State may determine<sup>13</sup>.

The Secretary of State<sup>14</sup> must as respects each year lay before Parliament<sup>15</sup> a report on the progress made during that year in research and development work carried out by or on behalf of any Minister of the Crown in relation to equipment that might increase the range of activities and independence or well-being of disabled persons, and in particular such equipment that might improve the indoor and outdoor mobility of such persons<sup>16</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 Sch 1 paras 9-11 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 1 paras 9-11.

2 National Health Service Act 2006 Sch 1 para 9.

3 National Health Service Act 2006 Sch 1 para 10(1)(a).

4 National Health Service Act 2006 Sch 1 para 10(1)(b).

5 National Health Service Act 2006 Sch 1 para 10(2)(a).

6 National Health Service Act 2006 Sch 1 para 10(2)(b).

7 I.e. under the Vehicle Excise and Registration Act 1994. As to the exemption from duty under the Vehicle Excise and Registration Act 1994 of vehicles for the disabled see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 750.

8 National Health Service Act 2006 Sch 1 para 10(2)(c).

9 National Health Service Act 2006 Sch 1 para 10(2)(d).

10 I.e. a person mentioned in the National Health Service Act 2006 Sch 1 para 9: see the text to notes 1-2.

11 National Health Service Act 2006 Sch 1 para 10(3). The matters are: (1) the taking of action referred to in Sch 1 para 10(2) (see the text to notes 5-9) (Sch 1 para 10(4)(a)); (2) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of the fuel (Sch 1 para 10(4)(b)); and (3) the taking of instruction in the driving of the vehicle (Sch 1 para 10(4)(c)).

12 I.e. the powers under the National Health Service Act 2006 Sch 1 para 10(2) and (3): see the text to notes 5-11.

13 National Health Service Act 2006 Sch 1 para 10(5). Regulations may provide for any incidental or supplementary matter for which it appears to the Secretary of State necessary or expedient to provide in connection with the taking of action under Sch 1 para 10(2), or the making of any payment under Sch 1 para 10(3): Sch 1 para 11. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. At the date at which this volume states the law no such regulations had been made.

14 This function, so far as exercisable in relation to Wales, was transferred to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1) and is now exercisable by the Welsh Ministers: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

15 As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941. As to the laying of documents by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

16 Chronically Sick and Disabled Persons Act 1970 s 22.

## **UPDATE**

### **35 Provision of vehicles for disabled persons**

TEXT AND NOTES 1, 2--The Secretary of State may make direct payments to a patient or his nominee for the purpose of securing the provision of services under the National Health Service Act 2006 Sch 1 para 9: see the National Health Service Act 2006 ss 12A-12D (added by Health Act 2009 s 11); and PARA 12A.

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### **36. Separation of younger from older patients.**

The Secretary of State<sup>1</sup> must use his best endeavours to secure that, so far as practicable, in any hospital<sup>2</sup> for which he is responsible a person who is suffering from a condition of chronic illness or disability<sup>3</sup> and who: (1) is in the hospital for the purpose of long-term care for that condition<sup>4</sup>; or (2) normally resides elsewhere but is being cared for in the hospital because that condition is such as to preclude him from residing elsewhere without the assistance of some other person<sup>5</sup>, and such assistance is for the time being not available<sup>6</sup>, is not cared for in the hospital as an in-patient in any part of the hospital which is normally used wholly or mainly for the care of elderly persons, unless he is himself an elderly person<sup>7</sup>.

The Secretary of State must in each year lay before each House of Parliament<sup>8</sup> a statement, in such form as he considers appropriate, of information as to any persons<sup>9</sup> who, not being elderly persons, have during the preceding year been cared for in a hospital vested in him and in any part of the hospital which is normally used wholly or mainly for the care of elderly persons<sup>10</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the delegation of this function to strategic health authorities and primary care trusts see PARA 89. This function, so far as exercisable in relation to Wales, was transferred to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1) and is now exercisable by the Welsh Ministers: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

2 As to the duty of the Secretary of State to provide hospital accommodation see PARA 12.

3 'Chronic illness' and 'disability' are not defined in the Chronically Sick and Disabled Persons Act 1970. However, where it appears to the Secretary of State to be necessary or expedient to do so for the proper operation of any provision of the Act, he may by regulations made by statutory instrument, which must be subject to annulment in pursuance of a resolution of either House of Parliament, make provision for their interpretation: see s 28. At the date at which this volume states the law no such regulations had been made. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

4 Chronically Sick and Disabled Persons Act 1970 s 17(1)(a).

5 Chronically Sick and Disabled Persons Act 1970 s 17(1)(b)(i).

6 Chronically Sick and Disabled Persons Act 1970 s 17(1)(b)(ii).

7 Chronically Sick and Disabled Persons Act 1970 s 17(1) (amended by the National Health Service Reorganisation Act 1973 s 57, Sch 4 para 132(1)). 'Elderly person' means a person who is aged 65 or more or is suffering from the effects of premature ageing: Chronically Sick and Disabled Persons Act 1970 s 17(3). The time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of his birth: see the Family Law Reform Act 1969 s 9.

8 As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941. As to the laying of documents by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 I.e. persons to whom the Chronically Sick and Disabled Persons Act 1970 s 17(1) applied: see the text to notes 1-7.

10 See the Chronically Sick and Disabled Persons Act 1970 s 17(2) (substituted by the National Health Service Reorganisation Act 1973 Sch 4 para 132(2)).

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### **37. Microbiological service.**

The Secretary of State<sup>1</sup> may provide a microbiological service for the control of the spread of infectious diseases<sup>2</sup>, and carry on such other activities as in his opinion can conveniently be carried on in conjunction with that service<sup>3</sup>. The service may include the provision of laboratories<sup>4</sup>, and charges may be made for services or materials supplied<sup>5</sup>. A power under these provisions may be exercised both for the purposes of the health service<sup>6</sup> and for other purposes<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 Sch 1 para 12 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 12.

2 National Health Service Act 2006 Sch 1 para 12(1)(a). As to the control and prevention of disease generally see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 884 et seq.

3 National Health Service Act 2006 Sch 1 para 12(1)(b).

4 National Health Service Act 2006 Sch 1 para 12(2).

5 National Health Service Act 2006 Sch 1 para 12(3). As to the recovery of charges see ss 191-194; and PARAS 482-485.

6 As to the meaning of 'health service' see PARA 10 note 3.

7 National Health Service Act 2006 Sch 1 para 12(4).

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### **38. Research.**

The Secretary of State<sup>1</sup> may conduct research, or may assist<sup>2</sup> any person<sup>3</sup> to conduct research, into any matters relating to the causation, prevention, diagnosis or treatment of illness<sup>4</sup>, and any such other matters connected with any service provided under the National Health Service Act 2006 as the Secretary of State considers appropriate<sup>5</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 Sch 1 para 13 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 1 para 13.

2 Assistance may be given by grants or otherwise: National Health Service Act 2006 Sch 1 para 13(2).

3 As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service Act 2006 Sch 1 para 13(1)(a). As to the meaning of 'illness' see PARA 10 note 5.

5 National Health Service Act 2006 Sch 1 para 13(1)(b).



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### **39. Independent advocacy services.**

The Secretary of State<sup>1</sup> must arrange for the provision of independent advocacy services to provide assistance to persons making, or intending to make, complaints about the health service or services provided as part of it<sup>2</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 See the National Health Service Act 2006 s 248; and PARA 597.

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#### **40. Polish resettlement health services.**

The Secretary of State<sup>1</sup> may provide such services and do such things as appear to him to be requisite for meeting the needs as to mental or bodily health of persons for whom he has power to provide accommodation under the Polish Resettlement Act 1947<sup>2</sup>. These services and things include those specified in the National Health Service Act 2006 and those which it is the duty of local social services authorities to provide under the Mental Health Act 1983<sup>3</sup>.

1 As to the Secretary of State see PARA 6 note 8. This function, so far as exercisable in relation to Wales, was transferred to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1) and is now exercisable by the Welsh Ministers: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

2 I.e. the persons for whom he has power to provide accommodation under the Polish Resettlement Act 1947 s 3: s 4(1) (amended by the Statute Law Revision Act 1953; SI 1968/1699; the National Health Service Reorganisation Act 1973 ss 57, 58, Sch 4 para 40, Sch 5; the National Health Service Act 1977 s 129, Sch 15 para 4; the Social Security Act 1980 s 20, Sch 4 para 1; the Health Services Act 1980 ss 1, 2, Sch 1 Pt I para 4; the Mental Health Act 1983 s 148, Sch 4 para 8; the Health Authorities Act 1995 s 2(1), Sch 1 para 86; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 3, 4). The persons in respect of whom the Secretary of State has such power are certain categories of Pole and others associated with Polish forces: see the Polish Resettlement Act 1947 s 2(2) (amended by the Civil Partnership Act 2004 s 257, Sch 26 para 18), Polish Resettlement Act 1947 s 3(1) (amended by the Social Security Act 1980 Sch 4 para 1). They also include persons in Northern Ireland of any description for whom the Secretary of State would have power so to provide if those persons were in Great Britain: Polish Resettlement Act 1947 s 12(1), (3) (s 12(3) substituted by the Social Security Act 1980 Sch 4 para 1(2)). 'Pole' means a person registered under the Aliens Order 1953, SI 1953/1671 (lapsed) as being a Pole: Polish Resettlement Act 1947 s 10(1), (2). As to the meaning of 'Great Britain' see PARA 15 note 8.

3 See the Polish Resettlement Act 1947 s 4(1) (as amended: see note 2). The Secretary of State may make arrangements with any other government department or other authority or person for the provision of services or the doing of things under s 4, on his behalf and at his expense by that authority or person, and his expenses are defrayed out of money provided by Parliament: s 4(2), (3) (both amended by SI 1968/1699). As to the meaning of 'person' see PARA 17 note 12. As to the Mental Health Act 1983 see **MENTAL HEALTH**.

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#### **40A. The autism strategy.**

##### **1. The strategy**

The Secretary of State must prepare and publish, no later than 1 April 2010, a document, to be known as the autism strategy, setting out a strategy for meeting the needs of adults in England with autistic spectrum conditions by improving the provision of relevant services to such adults by local authorities, NHS bodies and NHS foundation trusts: Autism Act 2009 s 1(1)-(3). As to the meaning of 'adult', 'local authority', 'NHS body' and 'relevant services', see the Autism Act 2009 s 4(1). The Secretary of State must keep the autism strategy under review and may revise it and, if he revises the autism strategy, must publish it as revised: Autism Act 2009 s 1(4), (5). The Secretary of State must consult and seek the participation of such persons as he considers appropriate in preparing the autism strategy, or in revising it in a way which would, in his opinion, result in a substantial change to the strategy: s 1(6).

##### **2. Guidance by the Secretary of State**

For the purpose of securing the implementation of the autism strategy, the Secretary of State must issue, no later than 31 December 2010, guidance to local authorities about the exercise of their social services functions within the meaning of the Local Authority Social Services Act 1970 s 1A (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 588) and to NHS bodies and NHS foundation trusts about the exercise of their functions concerned with the provision of relevant services: Autism Act 2009 s 2(1), (2). The Secretary of State must keep the guidance under review, and may revise it: s 2(3). In keeping the guidance under review the Secretary of State must in particular consider the extent to which the guidance has been effective in securing the implementation of the autism strategy: s 2(4). Guidance issued under s 2 must in particular include guidance about (1) the provision of relevant services for the purpose of diagnosing autistic spectrum conditions in adults; (2) the identification of adults with such conditions; (3) the assessment of the needs of adults with such conditions for relevant services; (4) planning in relation to the provision of relevant services to persons with autistic spectrum conditions as they move from being children to adults; (5) other planning in relation to the provision of relevant services to adults with autistic spectrum conditions; (6) the training of staff who provide relevant services to adults with such conditions; and (7) local arrangements for leadership in relation to the provision of relevant services to adults with such conditions: s 2(5). The Secretary of State must consult and seek the participation of local authorities, NHS bodies and NHS foundation trusts before issuing guidance under s 2, or revising it in a way which would, in the opinion of the Secretary of State, result in a substantial change to the guidance: s 2(6). Guidance or revised guidance issued under s 2 to a local authority or an NHS body is to be treated as if it were general guidance of the Secretary of State under the Local Authority Social Services Act 1970 s 7 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011) and, for the purposes of guidance or revised guidance, an NHS body is to be treated as if it were a local authority within the meaning of s 1 (see PARA 579 NOTE 11) and the functions of an NHS body mentioned in s 2(1)(b) are to be treated as if they were its social services functions within the meaning of s 1A: Autism Act 2009 s 3.

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## ***D. PROTECTION FROM FRAUD AND OTHER UNLAWFUL ACTIVITIES***

### **41. Compulsory disclosure of documents.**

Power is conferred by the National Health Service Act 2006<sup>1</sup> to require the production of documents<sup>2</sup> in connection with the exercise of the Secretary of State's<sup>3</sup> counter fraud functions or security management functions in relation to the health service<sup>4</sup>.

The Secretary of State's 'counter fraud functions' in relation to the health service means his power<sup>5</sup> to take action for the purpose of preventing, detecting or investigating<sup>6</sup> fraud, corruption or other unlawful activities carried out against or otherwise affecting: (1) the health service<sup>7</sup>; or (2) the Secretary of State in relation to his responsibilities for the health service<sup>8</sup>.

The Secretary of State's 'security management functions' in relation to the health service means his power<sup>9</sup> to take action for the purpose of protecting and improving the security of:

- 5 (a) persons employed<sup>10</sup> by the Secretary of State or an NHS body<sup>11</sup> in the provision of services for the purposes of the health service (known as 'NHS services')<sup>12</sup>;
- 6 (b) health service providers<sup>13</sup> and persons employed by them so far as they or persons so employed are engaged in any activity directly related to the provision of NHS services<sup>14</sup>;
- 7 (c) NHS contractors and persons employed by them so far as they or persons so employed are engaged in any activity directly related to the provision of NHS services<sup>15</sup>;
- 8 (d) persons not within heads (a) to (c) above who work in any capacity on premises used by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of NHS services<sup>16</sup>;
- 9 (e) persons on such premises who are there for the purpose of receiving, or are receiving or have received, treatment or other services as patients<sup>17</sup>, or who are accompanying such persons<sup>18</sup>;
- 10 (f) property<sup>19</sup> and information used or held by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of NHS services<sup>20</sup>.

1 le by the National Health Service Act 2006 Pt 10 (ss 195-210).

2 'Document' means anything in which information of any description is recorded: National Health Service Act 2006 s 210(1). In relation to information recorded otherwise than in legible form, any reference to the production of documents is a reference to the production of a copy of the information in legible form: s 210(4).

3 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

4 See the National Health Service Act 2006 s 195(1). References in Pt 10 (ss 195-210) to the health service are references to the health service in England: s 210(3). As to the meaning of 'health service' see PARA 10 note 3. As to the meaning of 'England' see PARA 6 note 2. As to the equivalent provision to the National Health Service Act 2006 Pt 10 in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

5 le by virtue of the National Health Service Act 2006 s 2(1)(b): see PARA 11.

6 'Investigating' means investigating in relation to civil or criminal proceedings: National Health Service Act 2006 s 195(5).

7 National Health Service Act 2006 s 195(2)(a).

8 National Health Service Act 2006 s 195(2)(b). As to the Secretary of State's duty to promote the health service see PARA 10; and as to his duty to provide certain services see PARA 12.

9 le by virtue of the National Health Service Act 2006 s 2(1)(b): see PARA 11.

10 'Employed' means employed whether under a contract of service or a contract for services or otherwise, and whether for remuneration or not: National Health Service Act 2006 s 210(1). As to employment contracts see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.

11 le subject to the National Health Service Act 2006 s 196(3) and any provision made under s 196(7), 'NHS body' has the meaning given by s 28(6) (see PARA 8 note 2): s 196(2). However, in s 195(3), and in s 197(1) (see PARA 42) so far as having effect in relation to the Secretary of State's security management functions, an 'NHS body' means a strategic health authority; a special health authority, so far as performing functions in respect of England; a primary care trust; an NHS trust all or most of whose hospitals, establishments and facilities are situated in England; or an NHS foundation trust: s 196(3). As to strategic health authorities see PARA 94 et seq. As to special health authorities see PARA 136. As to primary care trusts see PARA 111 et seq. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to the meaning of 'hospital' see PARA 12 note 4. As to the meaning of 'facilities' see PARA 12 note 7.

The Secretary of State may by order make such amendments of any of s 196(2)-(6) (see notes 13, 14) as he considers appropriate, and make such consequential amendments of Pt 10 (ss 195-210) as he considers appropriate: s 196(7). The power to make such an order is exercisable by statutory instrument which may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: see s 209(1), (3). A statutory instrument made by virtue of these provisions is subject to annulment in pursuance of a resolution of either House of Parliament: s 209(2). An order may make different provision for different cases or descriptions of case or different purposes or areas, and may make incidental, supplementary, consequential, transitory, transitional or saving provision: s 209(4). At the date at which this volume states the law no such order had been made. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

12 National Health Service Act 2006 s 195(3)(a).

13 'Health service provider' means any person (other than an NHS body) providing: (1) primary medical services (see PARA 241), primary dental services (see PARA 277) or pharmaceutical services (see PARA 339) under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 (National Health Service Act 2006 s 196(4)(a)); (2) general ophthalmic services under the National Health Service (Wales) Act 2006 (see PARA 338) (National Health Service Act 2006 s 196(4)(b)); or (3) primary ophthalmic services (see PARA 328) (s 196(4)(c)). See also note 11. As to the meaning of 'person' see PARA 17 note 2.

14 National Health Service Act 2006 s 195(3)(b). References in Pt 10 (ss 195-210) to the provision of services in relation to statutory health bodies, health service providers or NHS contractors, include references to the provision of goods or facilities, and include references to the provision of services (or goods or facilities) wherever that takes place: s 210(2). 'Statutory health body' means any body (other than an NHS body, or a person within s 196(4) (see note 13) or s 196(5)) established by or under an enactment and providing services in connection with the provision of, or exercising functions in relation to, the health service in either England or Wales or both: s 196(6). 'NHS contractor' means any person (other than an NHS body or a person within s 196(4)) providing services of any description under arrangements made with an NHS body: s 196(5). See also note 11. As to the meaning of 'functions' see PARA 6 note 3. 'Enactment' includes any provision of subordinate legislation (within the meaning of the Interpretation Act 1978), and references to enactments include enactments passed or made after 8 November 2006 (ie the date of the passing of the National Health Service Act 2006): s 210(1). 'Subordinate legislation' means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act: Interpretation Act 1978 s 21(1). As to the meaning of 'enactment' generally see PARA 10 note 7. As to subordinate legislation generally see **STATUTES** vol 44(1) (Reissue) PARAS 1499-1526.

15 National Health Service Act 2006 s 195(3)(c).

16 National Health Service Act 2006 s 195(3)(d).

17 National Health Service Act 2006 s 195(3)(e)(i). As to the meaning of 'patient' see PARA 15 note 6.

18 National Health Service Act 2006 s 195(3)(e)(ii).

19 As to the meaning of 'property' see PARA 4 note 9.

20 National Health Service Act 2006 s 195(3)(f).

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## 42. Disclosure notices.

If it appears to the Secretary of State<sup>1</sup> that there are reasonable grounds for suspecting: (1) that any documents<sup>2</sup> containing information relevant to the exercise of any of his counter fraud functions and his security management functions<sup>3</sup> are in the possession or under the control of any NHS body<sup>4</sup>, statutory health body<sup>5</sup>, health service provider<sup>6</sup> or NHS contractor<sup>7</sup> (known as the 'relevant organisation')<sup>8</sup>; and (2) that a specified person<sup>9</sup> is accountable<sup>10</sup> for the documents<sup>11</sup>, the Secretary of State may serve<sup>12</sup> on that person a notice<sup>13</sup> requiring him to produce the documents to an authorised officer<sup>14</sup>.

A notice must specify or describe the documents to which it relates<sup>15</sup>; and the notice may require those documents to be produced at or by such time as is specified in the notice, or at once<sup>16</sup>, and at such place, and in such manner, as is so specified<sup>17</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Pt 10 in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

2 As to the meaning of 'document' see PARA 41 note 2.

3 As to the meanings of 'counter fraud functions' and 'security management functions' see PARA 41.

4 As to the meaning of 'NHS body' see PARA 41 note 11.

5 As to the meaning of 'statutory health body' see PARA 41 note 14.

6 As to the meaning of 'health service provider' see PARA 41 note 13.

7 As to the meaning of 'NHS contractor' see PARA 41 note 14.

8 National Health Service Act 2006 s 197(1)(a).

9 The specified persons are any member, officer or director of the relevant organisation; any other person who takes part in the management of the affairs of that organisation; any person employed by that organisation; and (in the case of a health service provider or NHS contractor who is an individual) that individual: National Health Service Act 2006 s 197(3)(a)-(d).

10 An individual is 'accountable' for any documents if he has either day-to-day, or an overall, responsibility for the custody or control of the documents: National Health Service Act 2006 s 197(10).

11 National Health Service Act 2006 s 197(1)(b).

12 A notice may be served on a person by delivering it to him, leaving it at his proper address, or sending it by post to him at that address: National Health Service Act 2006 s 203(1), (2). For the purposes of s 203 and the Interpretation Act 1978 s 7 (service of documents by post: see PARA 27 note 7) in its application to the National Health Service Act 2006 s 203, the proper address of a person is his usual or last-known address (whether residential or otherwise), except that: (1) in the case of a notice to be served on the secretary, clerk or similar officer of a body corporate, it is the address of the registered office of that body or its principal office in the United Kingdom (s 203(3)(a)); (2) in the case of a notice to be served on a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership in the United Kingdom (s 203(3)(b)); and (3) in the case of a notice to be served on an officer of an unincorporated association (other than a partnership), it is the address of the principal office of the association in the United Kingdom (s 203(3)(c)). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'United Kingdom' see PARA 15 note 8. As to the registered office of a company see **COMPANIES** vol 14 (2009) PARAS 129-130. As to partnerships see **PARTNERSHIP**. As to corporations and unincorporated associations see **CORPORATIONS** vol 9(2)

(Reissue) PARA 1001. A requirement to send a document by post is not limited to requiring it to be sent by the Post Office postal system: see the Postal Services Act 2000 s 127(4), Sch 8 Pt 1; and **POST OFFICE**.

13 Any notice, and any variation of such a notice under the National Health Service Act 2006 s 197(8) (see note 16), must be in writing: s 197(9). As to the meaning of 'writing' see PARA 7 note 2.

14 National Health Service Act 2006 s 197(2). 'Authorised officer', in relation to any function, means (subject to s 197(5): see the text to notes 16-17) an officer of the Secretary of State authorised by him to act in exercise of the function: s 210(1). Where functions of the Secretary of State are exercisable by a special health authority references to authorised officers include officers of the special health authority authorised by or on behalf of the special health authority to act in exercise of the functions: s 210(5)(a). As to the delegation by the Secretary of State of his functions see s 199; and PARA 44. As to special health authorities see PARA 136. As to the production of documents pursuant to the service of a notice see PARA 43. As to the disclosure of information obtained by virtue of a notice see PARA 46. As to the protection of personal information see PARA 47. As to offences in relation to the production of documents see PARA 48.

15 National Health Service Act 2006 s 197(4).

16 National Health Service Act 2006 s 197(5)(a). When specifying a time at or by which the documents must be produced, the notice must not require them to be produced otherwise than at a reasonable hour: s 197(6). If the notice requires documents to be produced at once, it may only be served at a reasonable hour: s 197(7). An authorised officer may, by agreement with the person served with a notice within s 197(6) or (7), vary the notice so as to extend the time for compliance with it: s 197(8).

17 National Health Service Act 2006 s 197(5)(b).

## **UPDATE**

### **42 Disclosure notices**

NOTE 1--National Health Service (Wales) Act 2006 s 149 amended: Health and Social Care Act 2008 Sch 10 para 25.



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### **43. Production of documents.**

Where a notice requiring the production of documents<sup>1</sup> has been served<sup>2</sup>, an authorised officer<sup>3</sup> may take away any documents produced in compliance with the notice<sup>4</sup>, take copies of or extracts from any documents so produced<sup>5</sup>, and require the person producing any such documents to provide an explanation of any of them<sup>6</sup>. If a person who is required by a notice to produce any documents does not produce the documents in compliance with the notice, an authorised officer may require that person to state, to the best of his knowledge and belief, where they are<sup>7</sup>.

Documents produced in compliance with a notice may be retained for so long as the Secretary of State<sup>8</sup> considers that it is necessary to retain them (rather than copies of them) in connection with the exercise of any of his counter fraud functions and his security management functions<sup>9</sup>. If the Secretary of State has reasonable grounds for believing that any such documents may have to be produced for the purposes of any legal proceedings<sup>10</sup>, and that they might otherwise be unavailable for those purposes<sup>11</sup>, they may be retained until the proceedings are concluded<sup>12</sup>.

A person is not bound to comply with any requirement imposed by a notice, or any requirement to state where a document is<sup>13</sup>, unless evidence of authority is given at the time when the notice is served<sup>14</sup> or at the time when the requirement is imposed<sup>15</sup>. In addition, a person may not be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose in proceedings in the High Court on grounds of legal professional privilege<sup>16</sup>.

1     I.e. a notice under the National Health Service Act 2006 s 197: see PARA 42. As to the meaning of 'document' see PARA 41 note 2.

2     National Health Service Act 2006 s 198(1). As to the delegation of functions under s 198 see PARA 44. As to the equivalent provision to the National Health Service Act 2006 Pt 10 (ss 195-210) in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

3     As to the meaning of 'authorised officer' see PARA 42 note 14.

4     National Health Service Act 2006 s 198(2)(a). If the officer takes away any such document, the person producing it requests the officer to provide him with a copy of it, and the request appears to the officer to be reasonable in the circumstances, the officer must, as soon as is reasonably practicable, provide that person with a copy of the document (in such form as the officer considers appropriate): s 198(3). As to the meaning of 'person' see PARA 17 note 2.

5     National Health Service Act 2006 s 198(2)(b).

6     National Health Service Act 2006 s 198(2)(c). As to the disclosure of information obtained by virtue of s 198 see PARA 46. As to offences in relation to the production of documents see PARA 48.

7     National Health Service Act 2006 s 198(6).

8     As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

9     National Health Service Act 2006 s 198(4). As to the meanings of 'counter fraud functions' and 'security management functions' see PARA 41.

10    National Health Service Act 2006 s 198(5)(a).

- 11 National Health Service Act 2006 s 198(5)(b).
- 12 National Health Service Act 2006 s 198(5).
- 13 Is a requirement under the National Health Service Act 2006 s 198(6): see the text to note 7.
- 14 National Health Service Act 2006 s 198(7)(a).
- 15 National Health Service Act 2006 s 198(7)(b).
- 16 National Health Service Act 2006 s 198(8). As to legal professional privilege see **CIVIL PROCEDURE** vol 11 (2009) PARAS 558 et seq, 972. As to the High Court of Justice in England and Wales see **COURTS** vol 10 (Reissue) PARA 602 et seq.

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#### **44. Delegation of functions.**

If the Secretary of State<sup>1</sup> gives a direction<sup>2</sup> directing a special health authority<sup>3</sup> to exercise so much of his functions<sup>4</sup> in respect of notices requiring the disclosure of documents<sup>5</sup> as is specified in the direction (known as the 'delegated functions')<sup>6</sup>, he may give directions providing for senior officers<sup>7</sup> of the special health authority to exercise the delegated functions on behalf of the special health authority<sup>8</sup>.

The Secretary of State may by regulations<sup>9</sup> make such provision as he considers appropriate in connection with the exercise of the delegated functions<sup>10</sup>. The regulations may, in particular, make provision: (1) specifying conditions as to training that must be satisfied in relation to officers of the special health authority involved in the exercise of the delegated functions<sup>11</sup>; (2) for requiring officers to obtain specific authorisation before the delegated functions are exercised in relation to personal records<sup>12</sup>; (3) providing for the designation of officers for the purpose of giving such authorisations<sup>13</sup>; (4) otherwise prescribing the manner in which the delegated functions may be exercised<sup>14</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Pt 10 (ss 195-210) in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

2 Ie under the National Health Service Act 2006 s 7: see PARA 7.

3 As to special health authorities see PARA 136.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 Ie his functions under the National Health Service Act 2006 s 197 (see PARA 42) and s 198 (see PARA 43). As to the meaning of 'document' see PARA 41 note 2.

6 National Health Service Act 2006 s 199(1).

7 'Senior officer' means an officer of or above a level specified in the directions: National Health Service Act 2006 s 199(3). As to the meaning of 'officer' see PARA 28 note 5.

8 National Health Service Act 2006 s 199(2). A direction under s 199(2) must be given by regulations: see s 273(4)(b)(i); and PARA 9. The functions of the Secretary of State under s 197 (notice requiring production of documents: see PARA 42) and s 198 (production of documents: see PARA 43) are exercisable by the NHS Business Services Authority, and the delegated functions must be exercised on behalf of the Authority by authorised senior officers: see the National Health Service Delegation of Functions to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Counter Fraud and Security Management) Regulations 2008, SI 2008/1148. As to the power of the Secretary of State to issue a code of practice relating to the exercise of delegated functions see PARA 45. As to the NHS Business Services Authority see PARA 152.

9 The power to make such regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: see the National Health Service Act 2006 s 209(1), (2). Regulations may make different provision for different cases or descriptions of case or different purposes or areas, and may make incidental, supplementary, consequential, transitory, transitional or saving provision: s 209(4). As to the regulations made see note 8. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

10 National Health Service Act 2006 s 199(4).

11 National Health Service Act 2006 s 199(5)(a).

12 National Health Service Act 2006 s 199(5)(b). 'Personal records' means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating: (1) to his physical or mental health; (2) to spiritual counselling or assistance given or to be given to him; or (3) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who: (a) by reason of his office or occupation, has responsibilities for his personal welfare; or (b) by reason of an order of a court, has responsibilities for his supervision: Police and Criminal Evidence Act 1984 s 12; definition applied by the National Health Service Act 2006 s 210(1). Hospital records of patients' admissions and discharges are personal records because they relate to the physical or mental health of persons who could be identified from them: *R v Cardiff Crown Court, ex p Kellam* (1993) 16 BMLR 76, (1993) Times, 3 May, DC.

13 National Health Service Act 2006 s 199(5)(c).

14 National Health Service Act 2006 s 199(5)(d).

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#### **45. Code of practice relating to delegated functions.**

The Secretary of State<sup>1</sup> may issue a code of practice relating to: (1) the exercise of functions<sup>2</sup> in respect of notices requiring the disclosure of documents<sup>3</sup> by or on behalf of a special health authority<sup>4</sup>; (2) procedures to be followed in relation to the disclosure<sup>5</sup> of information obtained by or on behalf of a special health authority in the exercise of such functions<sup>6</sup>. The Secretary of State must keep the code under review and may from time to time revise the whole or any part of the code<sup>7</sup> and issue a revised code<sup>8</sup>.

Where the Secretary of State proposes to issue a code of practice he must prepare a draft of the code<sup>9</sup>, and consult such persons as he considers appropriate about the draft<sup>10</sup>. Where the Secretary of State proposes to issue a revised code which in his opinion would result in a substantial change in the code, he must prepare a draft of the revised code<sup>11</sup>, and consult such persons as he considers appropriate about the change<sup>12</sup>. Where, following consultation<sup>13</sup>, the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications<sup>14</sup> as he considers appropriate), it comes into force at the time when it is issued by the Secretary of State<sup>15</sup>.

A failure to observe any provision of a code or revised code issued under these provisions does not of itself make a person liable to any criminal or civil proceedings<sup>16</sup>. A code or revised code so issued is admissible in evidence in any criminal or civil proceedings<sup>17</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Pt 10 (ss 195-210) in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

2 As to the meaning of 'functions' see PARA 6 note 3.

3 I.e. functions under the National Health Service Act 2006 s 197 (see PARA 42) and s 198 (see PARA 43). As to the meaning of 'document' see PARA 41 note 2.

4 National Health Service Act 2006 s 200(1)(a). As to special health authorities see PARA 136.

5 I.e. in accordance with the National Health Service Act 2006 s 201 (see PARA 46) and s 202 (see PARA 47).

6 National Health Service Act 2006 s 200(1)(b).

7 National Health Service Act 2006 s 200(2)(a).

8 National Health Service Act 2006 s 200(2)(b).

9 National Health Service Act 2006 s 200(3)(a).

10 National Health Service Act 2006 s 200(3)(b). Consultation undertaken by the Secretary of State before the commencement of s 200 is as effective for the purposes of s 200 as consultation undertaken after that time: s 200(8). As to the meaning of 'person' see PARA 17 note 12. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

11 National Health Service Act 2006 s 200(4)(a).

12 National Health Service Act 2006 s 200(4)(b). See also note 10.

13 I.e. under the National Health Service Act 2006 s 200(3) or (4): see the text to notes 9-12.

14 'Modifications' includes additions, omissions and amendments: National Health Service Act 2006 s 275(1).

15 National Health Service Act 2006 s 200(5).

16 National Health Service Act 2006 s 200(6).

17 National Health Service Act 2006 s 200(7).

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#### **46. Disclosure of information.**

Information which is held by or on behalf of the Secretary of State<sup>1</sup>, and was obtained<sup>2</sup> by virtue of a notice requiring the production of documents<sup>3</sup>, must not be disclosed except in accordance with the statutory requirements<sup>4</sup>. A disclosure is made in accordance with the statutory requirements if it is made: (1) for the purposes of the exercise of any of the Secretary of State's functions<sup>5</sup> in relation to the health service in England<sup>6</sup>; (2) for the purposes of the exercise of any of the Welsh Ministers<sup>7</sup> functions in relation to the health service in Wales<sup>8</sup>; (3) for the purposes of any civil proceedings brought in the exercise of any of the functions mentioned in head (1) or (2) above<sup>9</sup>; (4) for the purposes of any criminal investigation or proceedings<sup>10</sup>; (5) for the purposes of any relevant disciplinary proceedings<sup>11</sup>; or (6) in accordance with an enactment<sup>12</sup> or order of a court or tribunal<sup>13</sup>. Information may be disclosed in accordance with heads (1) to (6) above despite any obligation of confidence that would otherwise prohibit or restrict the disclosure<sup>14</sup>.

Where information<sup>15</sup> is disclosed to any person<sup>16</sup> in accordance with heads (1) to (6) above, the information must not be used or further disclosed except for a purpose connected with the functions, investigation or proceedings for the purposes of which it was so disclosed<sup>17</sup>, or in accordance with an enactment or order of a court or tribunal<sup>18</sup>.

These provisions do not prohibit any disclosure or use of information relating to a particular person if it is made with the consent of that person<sup>19</sup>.

1 National Health Service Act 2006 s 201(1)(a). Where functions of the Secretary of State are exercisable by a special health authority references to information held or disclosed by or on behalf of the Secretary of State include information held or disclosed by or on behalf of the special health authority: s 210(5)(b). As to the delegation of functions by the Secretary of State to special health authorities see PARA 44. As to special health authorities see PARA 136. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Pt 10 (ss 195-210) in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

2 Ie by virtue of the National Health Service Act 2006 s 197 (see PARA 42) or s 198 (see PARA 43).

3 National Health Service Act 2006 s 201(1)(b). As to the meaning of 'document' see PARA 41 note 2.

4 See the National Health Service Act 2006 s 201(2). As to the protection of personal information disclosed see PARA 47. As to offences relating to the disclosure of information see PARA 49.

5 As to the meaning of 'functions' see PARA 6 note 3.

6 National Health Service Act 2006 s 201(3)(a). As to the meaning of 'health service' see PARA 41 note 4. As to the meaning of 'England' see PARA 6 note 2.

7 As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

8 National Health Service Act 2006 s 201(3)(b). As to the meaning of 'Wales' see PARA 6 note 2. As to the health service in Wales see PARA 74.

9 National Health Service Act 2006 s 201(3)(c).

10 National Health Service Act 2006 s 201(3)(d).

11 National Health Service Act 2006 s 201(3)(e). 'Relevant disciplinary proceedings' means disciplinary proceedings conducted in relation to an individual by: (1) an NHS body, statutory health body or health service

provider (s 201(4)(a)); or (2) any of the regulatory bodies mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (bodies within remit of Council for the Regulation of Health Care Professionals: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294) (National Health Service Act 2006 s 201(4)(b)). As to the meaning of 'NHS body' see PARA 41 note 11. As to the meaning of 'statutory health body' see PARA 41 note 14. As to the meaning of 'health service provider' see PARA 41 note 13.

12 As to the meaning of 'enactment' see PARA 41 note 14.

13 National Health Service Act 2006 s 201(3)(f).

14 National Health Service Act 2006 s 201(6). As to the law relating to confidence in relation to medical information see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 439 et seq.

15 The information to which the National Health Service Act 2006 s 201 applies by virtue of s 201(1): see the text to notes 1-3.

16 As to the meaning of 'person' see PARA 17 note 2.

17 National Health Service Act 2006 s 201(5)(a).

18 National Health Service Act 2006 s 201(5)(b).

19 National Health Service Act 2006 s 201(7).

## **UPDATE**

### **46 Disclosure of information**

NOTE 11--National Health Service Act 2006 s 201(4)(b) amended: Health and Social Care Act 2008 Sch 10 para 24.



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#### **47. Protection of personal information.**

Information obtained from personal records<sup>1</sup> produced in compliance with a notice requiring the production of documents<sup>2</sup> is 'protected information' if a person<sup>3</sup> (known as the 'discloser') discloses<sup>4</sup> the information for the purposes of any proceedings<sup>5</sup> and either the identity of the individual in question can be ascertained from the information itself<sup>6</sup>, or the discloser has reasonable cause to believe that it will be possible for a person who obtains the information as a direct or indirect consequence of the disclosure to ascertain the individual's identity from that information taken with other information obtained<sup>7</sup> and disclosed by or on behalf of the Secretary of State<sup>8</sup>.

The discloser must take all reasonable steps to ensure that, once disclosed by him<sup>9</sup>, the protected information is not further disclosed to any person who is not someone to whom it is necessary to disclose the information for any purpose connected with the proceedings<sup>10</sup>. However, the further disclosure of the information does not include any such disclosure by way of evidence in any proceedings<sup>11</sup>, or in accordance with an enactment<sup>12</sup> or order of a court or tribunal<sup>13</sup>; but information that appears to be protected information must not be disclosed by way of evidence in any proceedings unless the whole of the proceedings are held in private<sup>14</sup> or, in any other case, the information is disclosed in accordance with permission given by the court or tribunal on an application to it<sup>15</sup>.

1 As to the meaning of 'personal records' see PARA 44 note 12.

2 I.e. a notice under the National Health Service Act 2006 s 197: see PARA 42. As to the meaning of 'document' see PARA 41 note 2.

3 As to the meaning of 'person' see PARA 17 note 2.

4 I.e. in accordance with the National Health Service Act 2006 s 201(3): see PARA 46.

5 National Health Service Act 2006 s 202(1)(a). 'Proceedings' means criminal or civil proceedings, or relevant disciplinary proceedings: s 202(9). As to the meaning of 'relevant disciplinary proceedings' see PARA 46 note 11.

6 National Health Service Act 2006 s 202(1)(b)(i).

7 I.e. by virtue of the National Health Service Act 2006 s 197 (see PARA 42) or s 198 (see PARA 43).

8 National Health Service Act 2006 s 202(1)(b)(ii). As to the construction of references to information held or disclosed by or on behalf of the Secretary of State see PARA 46 note 1. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Pt 10 (ss 195-210) in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

The Secretary of State must make provision, whether in a code of practice issued under the National Health Service Act 2006 s 200 (see PARA 45) or otherwise, for requiring any person disclosing protected information in accordance with s 201(3) (see PARA 46) to ensure, by the use of a distinguishing mark or in some other way, that the information is clearly identified as protected information: s 202(4).

9 I.e. in accordance with the National Health Service Act 2006 s 201(3): see PARA 46.

10 National Health Service Act 2006 s 202(2). As to offences relating to the use or disclosure of information see PARA 49.

11 National Health Service Act 2006 s 202(3)(a).

12 As to the meaning of 'enactment' see PARA 41 note 14.

13 National Health Service Act 2006 s 202(3)(a).

14 National Health Service Act 2006 s 202(5)(a).

15 National Health Service Act 2006 s 202(5)(b). If, on an application by a party to proceedings before a court, or proceedings of any description before a tribunal that sits, or may sit, in public during the whole or part of proceedings of that description, the court or tribunal is satisfied that it is in the interests of justice for any information that appears to be protected information to be disclosed by way of evidence in the proceedings, it may give permission for the information to be so disclosed, on such terms as it thinks fit: s 202(6). When determining such an application, the court or tribunal must consider whether, in the interests of protecting the identity of the individual to whom the information relates, the whole or part of the proceedings should be held in private: s 202(7). If the court or tribunal is satisfied that the whole or part of the proceedings should be held in private, it must give such directions, or take such other steps, as appear to it to be appropriate: s 202(8).

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#### **48. Offences in connection with production of documents.**

A person<sup>1</sup> commits an offence if:

- 11 (1) without reasonable excuse, he fails to comply with any requirement imposed on him under the provisions<sup>2</sup> relating to notices for the production of documents<sup>3</sup>;
- 12 (2) in purported compliance with any requirement imposed on him<sup>4</sup> in relation to the production of documents, he makes a statement which is false or misleading<sup>5</sup> and he either knows that it is false or misleading or is reckless as to whether it is false or misleading<sup>6</sup>.

If a person is convicted of an offence under head (1) above in respect of a failure to produce a document and the failure continues after the date of his conviction, the person commits a further offence<sup>7</sup>.

1 As to the meaning of 'person' see PARA 17 note 2. As to offences by bodies corporate, partnerships and other unincorporated associations see PARA 50.

2 Ie under the National Health Service Act 2006 s 197 (see PARA 42) or s 198 (see PARA 43).

3 National Health Service Act 2006 s 204(1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 3 on the standard scale, or to both: s 204(2). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (not yet in force) (alteration of penalties for summary offences), the reference in the National Health Service Act 2006 s 204(2) to a period of imprisonment of 51 weeks is a reference to a period of imprisonment of three months: s 208(2). As to the meaning of 'document' see PARA 41 note 2. As to the standard scale see PARA 28 note 12. As to the equivalent provision to the National Health Service Act 2006 Pt 10 (ss 195-210) in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

4 Ie under the National Health Service Act 2006 s 198: see PARA 43.

5 National Health Service Act 2006 s 204(3)(a). 'False or misleading' means false or misleading in a material particular: s 204(5).

6 National Health Service Act 2006 s 204(3)(b). A person guilty of such an offence is liable on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both (s 204(6)(a)) or, on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both (s 204(6)(b)). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) (not yet in force) (general limit on magistrates' courts power to impose imprisonment: see **MAGISTRATES**), the reference in the National Health Service Act 2006 s 204(6)(b) to a period of imprisonment of 12 months is a reference to a period of imprisonment of six months: s 208(1). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. As to the 'prescribed sum' see PARA 27 note 24.

7 National Health Service Act 2006 s 204(3)(a). A person guilty of such further offence is liable on summary conviction to a fine not exceeding 2% of level 3 on the standard scale for each day on which the failure so continues: s 204(3)(b).

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#### **49. Offences relating to disclosure or use of information.**

A person<sup>1</sup> commits an offence if he fails to comply with the provisions relating to the disclosure of information<sup>2</sup>, or the provision<sup>3</sup> relating to the protection of personal information<sup>4</sup>. It is a defence for a person charged with such an offence in respect of a disclosure of information to prove that at the time of the alleged offence any of the prescribed circumstances applied<sup>5</sup>, or he reasonably believed that they applied<sup>6</sup>. The prescribed circumstances are: (1) that the disclosure was lawful<sup>7</sup>; (2) that the information had already been lawfully made available to the public<sup>8</sup>; (3) that the disclosure was necessary or expedient for the purpose of protecting the welfare of any individual<sup>9</sup>; (4) that the disclosure was made in a form in which no person to whom the information relates is identified<sup>10</sup>.

1 As to the meaning of 'person' see PARA 17 note 2. As to offences by bodies corporate, partnerships and other unincorporated associations see PARA 50.

2 In the National Health Service Act 2006 s 201(2) or (5): see PARA 46.

3 The provision relating to the protection of personal information is the National Health Service Act 2006 s 202(2): see PARA 47.

4 National Health Service Act 2006 s 205(1). A person guilty of an offence under s 205(1) is liable on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both (s 205(2)(a)), or on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding the statutory maximum, or to both (s 205(2)(b)). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) (not yet in force) (alteration of penalties for summary offences), the reference in the National Health Service Act 2006 s 205(2)(b) to a period of imprisonment of 51 weeks is a reference to a period of imprisonment of three months: s 208(2). As to the statutory maximum see PARA 48 note 6. As to the equivalent provision to the National Health Service Act 2006 Pt 10 (ss 195-210) in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

5 National Health Service Act 2006 s 205(3)(a).

6 National Health Service Act 2006 s 205(3)(b).

7 National Health Service Act 2006 s 205(4)(a).

8 National Health Service Act 2006 s 205(4)(b).

9 National Health Service Act 2006 s 205(4)(c).

10 National Health Service Act 2006 s 205(4)(d). Section 205(4)(d) is not satisfied if the identity of any such person can be ascertained either from the information itself (s 205(5)(a)), or from that information taken with other information obtained by virtue of s 197 (see PARA 42) or s 198 (see PARA 43) and disclosed by or on behalf of the Secretary of State (s 205(5)(b)). As to the construction of references to information disclosed by or on behalf of the Secretary of State see PARA 46 note 1. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

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## **50. Offences by bodies corporate, partnerships and unincorporated associations.**

If an offence<sup>1</sup> committed by a body corporate is proved to have been committed with the consent or connivance of an officer<sup>2</sup>, or to be attributable to any neglect on his part<sup>3</sup>, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly<sup>4</sup>.

If an offence committed by a partnership is proved to have been committed with the consent or connivance of a partner<sup>5</sup>, or to be attributable to any neglect on his part<sup>6</sup>, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly<sup>7</sup>.

If an offence committed by an unincorporated association<sup>8</sup> (other than a partnership) is proved to have been committed with the consent or connivance of an officer of the association or a member of its governing body<sup>9</sup>, or to be attributable to any neglect on the part of such an officer or member<sup>10</sup>, the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly<sup>11</sup>.

1 'Offence' means an offence under the National Health Service Act 2006 Pt 10 (ss 195-210): ss 206(7), 207(8). As to offences see **PARAS** 48, 49. As to the equivalent provision to the National Health Service Act 2006 Pt 10 (ss 195-210) in relation to Wales see the National Health Service (Wales) Act 2006 Pt 10 (ss 143-158).

2 National Health Service Act 2006 s 206(1)(a). 'Officer', in relation to the body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity: s 206(2). As to the meaning of 'officer' generally see **PARA** 28 note 5. If the affairs of a body corporate are managed by its members, s 206(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 206(3). As to bodies corporate see **COMPANIES** vol 14 (2009) **PARA** 1; **CORPORATIONS**.

3 National Health Service Act 2006 s 206(1)(b).

4 National Health Service Act 2006 s 206(1).

5 National Health Service Act 2006 s 206(4)(a). 'Partner' includes a person purporting to act as a partner: s 206(5). As to partnership see **PARTNERSHIP**.

6 National Health Service Act 2006 s 206(4)(b).

7 National Health Service Act 2006 s 206(4). Proceedings for an offence alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners): s 207(1). Section 207(1) does not affect any liability of a partner under s 206(4): s 207(7). Rules of court relating to the service of documents (see **CIVIL PROCEDURE** vol 11 (2009) **PARA** 138 et seq) have effect as if the partnership were a body corporate: s 207(3). In proceedings for an offence brought against a partnership, the Criminal Justice Act 1925 s 33 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) **PARAS** 1161, 1260, 1281) and the Magistrates' Courts Act 1980 s 46, Sch 3 (see **MAGISTRATES** vol 29(2) (Reissue) **PARA** 666) apply as they apply in relation to a body corporate: National Health Service Act 2006 s 207(4). A fine imposed on a partnership on its conviction for an offence must be paid out of the partnership assets: s 207(5).

8 As to unincorporated associations see **CORPORATIONS** vol 9(2) (Reissue) **PARA** 1001.

9 National Health Service Act 2006 s 206(6)(a).

10 National Health Service Act 2006 s 206(6)(b).

11 National Health Service Act 2006 s 206(6). Proceedings for an offence alleged to have been committed by an unincorporated association (other than a partnership) must be brought in the name of the association (and not in that of any of its members): s 207(2). Section 207(2) does not affect any liability of an officer or member under s 206(6): s 207(7). Rules of court relating to the service of documents (see **CIVIL PROCEDURE** vol 11 (2009) PARA 138 et seq) have effect as if the unincorporated association were a body corporate: s 207(3). In proceedings for an offence brought against an unincorporated association, the Criminal Justice Act 1925 s 33 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1161, 1260, 1281) and the Magistrates' Courts Act 1980 s 46, Sch 3 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 666) apply as they apply in relation to a body corporate: National Health Service Act 2006 s 207(4). A fine imposed on an unincorporated association on its conviction for an offence must be paid out of the funds of the association: s 207(6).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/E. STANDING ADVISORY COMMITTEES/51. Establishment.

## ***E. STANDING ADVISORY COMMITTEES***

### **51. Establishment.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> establish standing advisory committees for the purpose of advising him on such of the services provided under the National Health Service Act 2006 as may be specified in the order<sup>3</sup>. A standing advisory committee consists of persons appointed by the Secretary of State after consultation with such representative organisations as he recognises for the purpose<sup>4</sup>. A standing advisory committee must advise the Secretary of State on such matters relating to the services with which the committee is concerned as it considers appropriate<sup>5</sup>, and on any questions referred to it by the Secretary of State relating to those services<sup>6</sup>.

The Secretary of State may make such payments in respect of expenses incurred by a standing advisory committee as he may determine<sup>7</sup>; and he may pay to the members of a standing advisory committee, or a sub-committee of a standing advisory committee, such travelling and other allowances, including compensation for loss of remunerative time, as he may determine<sup>8</sup>. Payments under these provisions are subject to such conditions as to records, certificates, or otherwise as the Secretary of State may determine<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 250, Sch 19 in relation to Wales see the National Health Service (Wales) Act 2006 ss 189, 190, Schs 13, 14.

2 As to the making of orders see PARA 9.

3 National Health Service Act 2006 s 250(1). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service (Standing Advisory Committees) Order 1981, SI 1981/597, has effect under this provision. There are currently constituted the Standing Dental Advisory Committee for the purpose of advising the Secretary of State on dental services, and the Standing Advisory Committee on Vaccination and Immunisation for the purpose of advising the Secretary of State on the provision of vaccination and immunisation services being facilities for the prevention of illness: see the National Health Service (Standing Advisory Committees) Order 1981, SI 1981/597, art 2(1)-(3), Schedule Pts I, II. As to the meaning of 'illness' see PARA 10 note 5. Each of the committees consists of such number of members as the Secretary of State may from time to time determine: art 2(4).

4 National Health Service Act 2006 s 250(2). Regulations may make provision with respect to the appointment, the tenure of office, and the vacation of office, of the members of any standing advisory committee: Sch 19 para 1. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(1), (2), the National Health Service (Standing Advisory Committees) Regulations 1981, SI 1981/101, have effect under these provisions: see PARA 52.

5 National Health Service Act 2006 s 250(3)(a).

6 National Health Service Act 2006 s 250(3)(b).

7 National Health Service Act 2006 Sch 19 para 8.

8 National Health Service Act 2006 Sch 19 para 9.

9 National Health Service Act 2006 Sch 19 para 10.

## **UPDATE**

## **51 Establishment**

NOTE 1--National Health Service (Wales) Act 2006 Sch 13 amended: Health Act 2009 Sch 3 para 17. See further Health Act 2009 Sch 3 paras 18, 19.

NOTE 3--The Standing Dental Advisory Committee is abolished: National Health Service (Standing Advisory Committees) Amendment Order 2010, SI 2010/635, art 2. SI 1981/597 Schedule amended to reflect that change: SI 2010/635.

NOTE 12--National Health Service Act 2006 Sch 19 para 1 amended: Health Act 2009 Sch 3 para 13(2). See further Health Act 2009 Sch 3 paras 18, 19.



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## 52. Appointment of members.

The term of office of a member of a standing advisory committee<sup>1</sup> is such period not exceeding four years, expiring on 31 March in any year, as the Secretary of State<sup>2</sup> specifies on making the appointment<sup>3</sup>, and on the expiration of that term the member is eligible for reappointment<sup>4</sup>. A member may resign his office at any time by giving notice in writing to the Secretary of State<sup>5</sup>, and a person who holds any of certain offices<sup>6</sup> at the time of his appointment to an advisory committee must cease to be a member of that committee if he ceases to hold that office<sup>7</sup>.

1 As to standing advisory committees see PARA 51.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 National Health Service (Standing Advisory Committees) Regulations 1981, SI 1981/101, reg 3. As to the continuing effect of such regulations see PARA 51.

4 National Health Service (Standing Advisory Committees) Regulations 1981, SI 1981/101, reg 7. Where for any reason a person ceases to be a member before the expiration of the period of his appointment, the term of office of any member appointed in his place is the remainder of that period: reg 4.

5 National Health Service (Standing Advisory Committees) Regulations 1981, SI 1981/101, reg 5(1). As to the meaning of 'writing' see PARA 7 note 2.

6 I.e. any of the following offices: President of the Royal College of Physicians of London; President of the Royal College of Surgeons of England; President of the Royal College of Obstetricians and Gynaecologists; President of the Royal College of Psychiatrists; President of the Royal College of Pathologists; President of the Royal College of Nursing of the United Kingdom; President of the Royal College of Midwives; Chairman of the Council of the British Medical Association; Chairman of the Council of the British Dental Association; Chairman of the Council of the Royal College of General Practitioners; President of the Faculty of Community Medicine; President of the Pharmaceutical Society of Great Britain; President of the Royal College of Radiologists; Dean of the Faculty of Anaesthetists; and Dean of the Faculty of Occupational Medicine: National Health Service (Standing Advisory Committees) Regulations 1981, SI 1981/101, reg 5(3) (amended by SI 1986/458). As to the Medical Royal Colleges see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 64. As to the Royal Pharmaceutical Society of Great Britain see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 881 et seq.

7 National Health Service (Standing Advisory Committees) Regulations 1981, SI 1981/101, reg 5(2). An office holder may nominate a deputy to serve on an advisory committee: see reg 6 (amended by SI 1986/458).

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### **53. Proceedings.**

Each standing advisory committee<sup>1</sup> must elect one of the members of the committee to be chairman of the committee<sup>2</sup>. Each standing advisory committee has power to regulate its own procedure<sup>3</sup>; and the proceedings of a standing advisory committee are not invalidated by any vacancy in the membership of the committee, or by any defect in a member's appointment or qualification<sup>4</sup>. The Secretary of State<sup>5</sup> must appoint a secretary to each standing advisory committee<sup>6</sup>.

Each standing advisory committee may appoint such sub-committees as it considers appropriate, and as are approved by the Secretary of State, to consider and report on questions referred to it by the standing advisory committee<sup>7</sup>. Any such sub-committee may include persons who are not members of the standing advisory committee<sup>8</sup>.

1 As to standing advisory committees see PARA 51; and as to the appointment of members to such committees see PARA 52.

2 National Health Service Act 2006 Sch 19 para 5.

3 National Health Service Act 2006 Sch 19 para 6.

4 National Health Service Act 2006 Sch 19 para 7.

5 As to the Secretary of State see PARA 6 note 8.

6 National Health Service Act 2006 Sch 19 para 2.

7 National Health Service Act 2006 Sch 19 para 3.

8 National Health Service Act 2006 Sch 19 para 4.

### **UPDATE**

### **53 Proceedings**

NOTE 2--National Health Service Act 2006 Sch 19 para 5A added: Health Act 2009 Sch 3 para 13(3). See further Health Act 2009 Sch 3 paras 18, 19.

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## **F. PATIENT INFORMATION**

### **(A) CONTROL OF PATIENT INFORMATION**

#### **54. Regulations.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make such provision for and in connection with requiring or regulating the processing<sup>3</sup> of prescribed patient information<sup>4</sup> for medical purposes<sup>5</sup> as he considers necessary or expedient in the interests of improving patient care<sup>6</sup>, or in the public interest<sup>7</sup>. Such regulations may, in particular, make provision<sup>8</sup>:

- 13 (1) for requiring prescribed communications of any nature which contain patient information to be disclosed by health service bodies<sup>9</sup> in prescribed circumstances (a) to the person to whom the information relates<sup>10</sup>; (b) (where it relates to more than one person) to the person to whom it principally relates<sup>11</sup>; or (c) to a prescribed person on behalf of any such person as is mentioned in head (a) or (b) above<sup>12</sup>, in such manner as may be prescribed<sup>13</sup>;
- 14 (2) for requiring or authorising the disclosure or other processing of prescribed patient information to or by persons of any prescribed description subject to compliance with any prescribed conditions (including conditions requiring prescribed undertakings to be obtained from such persons as to the processing of such information)<sup>14</sup>;
- 15 (3) for securing that, where prescribed patient information is processed by a person in accordance with the regulations, anything done by him in so processing the information must be taken to be lawfully done despite any obligation of confidence owed by him in respect of it<sup>15</sup>;
- 16 (4) for creating offences<sup>16</sup> or for creating other procedures for enforcing any provisions of the regulations<sup>17</sup>.

The regulations<sup>18</sup> may not make provision: (i) requiring the processing of confidential patient information<sup>19</sup> for any purpose if it would be reasonably practicable to achieve that purpose otherwise than pursuant to such regulations, having regard to the cost of and the technology available for achieving that purpose<sup>20</sup>; (ii) for requiring the processing of confidential patient information solely or principally for the purpose of determining the care and treatment to be given to particular individuals<sup>21</sup>.

Regulations<sup>22</sup> may not make provision for or in connection with the processing of prescribed patient information in a manner inconsistent with any provision made by or under the Data Protection Act 1998<sup>23</sup>.

Before making any regulations<sup>24</sup> the Secretary of State must, to such extent as he considers appropriate<sup>25</sup>, consult such bodies appearing to him to represent the interests of those likely to be affected by the regulations as he considers appropriate<sup>26</sup>.

1 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the National Health Service Act 2006 ss 251, 252 and therefore these provisions apply to both England and Wales: see s 271(3)(g); and PARA 6. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the making of regulations see PARA 9. Before laying before Parliament a draft of any statutory instrument containing regulations under the National Health Service Act 2006 s 251(1), or making any regulations pursuant to s 251(5)(b) (see note 20), the Secretary of State must seek and have regard to the views of the Patient Information Advisory Group on the proposed regulations: s 252(2). As to the Patient Information Advisory Group see PARA 62. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438 (see PARA 55 et seq) have effect under the National Health Service Act 2006 s 251(1).

3 'Processing', in relation to information, means the use, disclosure or obtaining of the information or the doing of such other things in relation to it as may be prescribed for the purposes of this definition: National Health Service Act 2006 s 251(13). 'Prescribed' means prescribed by the regulations: see s 275(1).

4 'Patient information' means: (1) information (however recorded) which relates to the physical or mental health or condition of an individual, to the diagnosis of his condition or to his care or treatment (National Health Service Act 2006 s 251(10)(a)); and (2) information (however recorded) which is to any extent derived, directly or indirectly, from such information (s 251(10)(b)), whether or not the identity of the individual in question is ascertainable from the information (s 251(10)).

5 'Medical purposes' means the purposes of any of: (1) preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of health and social care services (National Health Service Act 2006 s 251(12)(a)); and (2) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care and treatment (s 251(12)(b)). As to the meaning of 'medical' see PARA 10 note 5.

6 National Health Service Act 2006 s 251(1)(a). Section 251(1) is subject to s 251(4)-(7) (see the text to notes 18-23): s 251(3). As to the meaning of 'patient' see PARA 15 note 6.

7 National Health Service Act 2006 s 251(1)(b). See also note 6.

8 National Health Service Act 2006 s 251(2) is subject to s 251(4)-(7) (see the text to notes 18-23): s 251(3).

9 'Health service body' means any body (including a government department) or person engaged in the provision of the health service that is prescribed, or of a description prescribed, for the purposes of this definition: National Health Service Act 2006 s 251(13). As to the meaning of 'person' see PARA 17 note 2.

10 National Health Service Act 2006 s 251(2)(a)(i).

11 National Health Service Act 2006 s 251(2)(a)(ii).

12 National Health Service Act 2006 s 251(2)(a)(iii).

13 National Health Service Act 2006 s 251(2)(a).

14 National Health Service Act 2006 s 251(2)(b).

15 National Health Service Act 2006 s 251(2)(c). As to the law relating to confidence in relation to medical information see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 439 et seq.

16 I.e offences punishable on summary conviction by a fine not exceeding level 5 on the standard scale or such other level as is prescribed: National Health Service Act 2006 s 251(2)(d). As to the standard scale see PARA 28 note 12.

17 National Health Service Act 2006 s 251(2)(d).

18 I.e regulations under the National Health Service Act 2006 s 251(1): see the text to notes 1-7.

19 Patient information is 'confidential patient information' where: (1) the identity of the individual in question is ascertainable from that information, or from that information and other information which is in the possession of, or is likely to come into the possession of, the person processing that information (National Health Service Act 2006 s 251(11)(a)); and (2) that information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual (s 251(11)(b)).

20 National Health Service Act 2006 s 251(4). Where regulations make provision requiring the processing of prescribed confidential patient information, the Secretary of State: (1) must, at any time within the period of one month beginning on each anniversary of the making of such regulations, consider whether any such provision could be included in regulations made at that time without contravening s 251(4) (s 251(5)(a)); and (2) if he determines that any such provision could not be so included, must make further regulations varying or

revoking the regulations made to such extent as he considers necessary in order for the regulations to comply with s 251(4) (s 251(5)(b)). See also note 2. As to the meaning of 'month' see PARA 28 note 16.

21 National Health Service Act 2006 s 251(6).

22 Ie regulations under the National Health Service Act 2006 s 251.

23 National Health Service Act 2006 s 251(7). Section 251(7) does not affect the operation of provisions made under s 251(2)(c) (see the text to note 15); s 251(8). As to the Data Protection Act 1998 see **CONFIDENCE AND DATA PROTECTION**.

24 Ie under the National Health Service Act 2006 s 251.

25 Ie in the light of the requirements of the National Health Service Act 2006 s 252: see PARA 62.

26 National Health Service Act 2006 s 251(9). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

## **UPDATE**

### **54 Regulations**

NOTE 2--For 'Patient Information Advisory Group' read 'National Information Governance Board for Health and Social Care': s 252(2) (s 252 substituted by the Health and Social Care Act 2008 s 158).

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## **55. Processing for general purposes.**

Subject to the prescribed restrictions and exclusions<sup>1</sup>, confidential patient information<sup>2</sup> may be processed<sup>3</sup> for medical purposes<sup>4</sup> in the specified circumstances, provided that the processing has been approved, in the case of medical research by both the Secretary of State<sup>5</sup> and a research ethics committee<sup>6</sup>, and in any other case by the Secretary of State<sup>7</sup>.

The specified circumstances in which confidential patient information may be processed for medical purposes are:

- 17 (1) the processing of confidential patient information for medical purposes with a view to making the patient in question less readily identifiable from that information<sup>8</sup>;
- 18 (2) the processing of confidential patient information that relates to the present or past geographical locations of patients (including where necessary information from which patients may be identified) which is required for medical research into the locations at which disease or other medical conditions may occur<sup>9</sup>;
- 19 (3) the processing of confidential patient information to enable the lawful holder of that information to identify and contact patients for the purpose of obtaining consent: (a) to participate in medical research<sup>10</sup>; (b) to use the information for the purposes of medical research<sup>11</sup>; or (c) to allow the use of tissue or other samples for medical purposes<sup>12</sup>;
- 20 (4) the processing of confidential patient information for medical purposes from more than one source with a view to: (a) linking information from more than one of those sources<sup>13</sup>; (b) validating the quality or completeness of confidential patient information<sup>14</sup>, or data derived from such information<sup>15</sup>; (c) avoiding the impairment of the quality of data derived from confidential patient information by incorrect linkage or the unintentional inclusion of the same information more than once<sup>16</sup>;
- 21 (5) the audit, monitoring and analysing of the provision made by the health service<sup>17</sup> for patient care and treatment<sup>18</sup>;
- 22 (6) the granting of access to confidential patient information for one or more of the above purposes<sup>19</sup>.

1 Subject to the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7: see PARA 57.

2 As to the meaning of 'patient information' see PARA 54 note 4; and as to the meaning of 'confidential patient information' see PARA 54 note 19. As to the meaning of 'patient' see PARA 15 note 6.

3 As to the meaning of 'processed' see PARA 54 note 3. As to the modification of the duty of confidence in respect of the processing of information under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, see PARA 60.

4 As to the meaning of 'medical purposes' see PARA 54 note 5. As to the meaning of 'medical' see PARA 10 note 5.

5 As to the Secretary of State see PARA 6 note 8. The Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, extend to England and Wales: see reg 1(5). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 5(a). 'Research ethics committee' means an ethics committee established or recognised in accordance with the Medicines for Human

Use (Clinical Trials) Regulations 2004, SI 2004/1031, Pt 2 (regs 5-10) (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 84 et seq) or any other committee established to advise on the ethics of research investigations in human beings, and recognised for that purpose by or on behalf of the Secretary of State or the Welsh Ministers: Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 1(2). This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

7 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 5(b). As to the processing of information for other specific purposes see PARAS 58, 59.

8 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 1.

9 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 2.

10 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 3(a).

11 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 3(b).

12 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 3(c).

13 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 4(a).

14 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 4(b)(i).

15 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 4(b)(ii).

16 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 4(c).

17 As to the meaning of 'health service' see PARA 10 note 3.

18 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 5.

19 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, Schedule para 6.

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## **56. Registration.**

Where an approval granted<sup>1</sup> by the Secretary of State<sup>2</sup> permits the transfer of confidential patient information<sup>3</sup> between persons<sup>4</sup> who may determine the purposes for which, and the manner in which, the information may be processed<sup>5</sup>, he must record in a register the name and address of each of those persons together with the specified particulars<sup>6</sup>. The following particulars are specified for inclusion in each entry in the register: (1) a description of the confidential patient information to which the approval relates<sup>7</sup>; (2) the medical purposes<sup>8</sup> for which the information may be processed<sup>9</sup>; (3) the specified circumstances<sup>10</sup> under which the information may be processed<sup>11</sup>; and (4) such other particulars as the Secretary of State may consider appropriate to enter in the register<sup>12</sup>.

The Secretary of State must retain the particulars of each entry in the register for so long as confidential patient information may be processed under an approval and for not less than 12 months<sup>13</sup> after the termination of an approval<sup>14</sup>. The Secretary of State must, in such manner and to the extent to which he considers it appropriate, publish entries in the register<sup>15</sup>.

1    le under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 5: see PARA 55.

2    As to the Secretary of State see PARA 6 note 8. The Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, extend to England and Wales: see reg 1(5). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3    As to the meaning of 'patient information' see PARA 54 note 4; and as to the meaning of 'confidential patient information' see PARA 54 note 19. As to the meaning of 'patient' see PARA 15 note 6.

4    As to the meaning of 'person' see PARA 17 note 2.

5    As to the meaning of 'processed' see PARA 54 note 3.

6    Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 6(1).

7    Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 6(2)(a).

8    As to the meaning of 'medical purposes' see PARA 54 note 5.

9    Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 6(2)(b).

10   le the specified circumstances in the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 5, Schedule: see PARA 55.

11   Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 6(2)(c).

12   Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 6(2)(d).

13   As to the meaning of 'month' see PARA 28 note 16.

14   Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 6(3).

15   Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 6(4).



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## **57. Restrictions and exclusions.**

Where a person<sup>1</sup> is in possession<sup>2</sup> of confidential patient information<sup>3</sup>, he must not process<sup>4</sup> that information more than is necessary to achieve the purposes for which he is permitted<sup>5</sup> to process that information and, in particular, he must:

- 23 (1) so far as it is practical to do so, remove from the information any particulars which identify the person to whom it relates which are not required for the purposes for which it is, or is to be, processed<sup>6</sup>;
- 24 (2) not allow any person access to that information other than a person who, by virtue of his contract of employment or otherwise, is involved in processing the information for one or more of those purposes and is aware of the purpose or purposes for which the information may be processed<sup>7</sup>;
- 25 (3) ensure that appropriate technical and organisational measures are taken to prevent unauthorised processing of that information<sup>8</sup>;
- 26 (4) review at intervals not exceeding 12 months<sup>9</sup> the need to process confidential patient information and the extent to which it is practicable to reduce the confidential patient information which is being processed<sup>10</sup>;
- 27 (5) on request by any person or body, make available information on the steps taken to comply with the statutory requirements<sup>11</sup>.

No person may process confidential patient information<sup>12</sup> unless he is a health professional<sup>13</sup> or a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional<sup>14</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 Ie under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438. The Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, extend to England and Wales: see reg 1(5). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 As to the meaning of 'patient information' see PARA 54 note 4; and as to the meaning of 'confidential patient information' see PARA 54 note 19. As to the meaning of 'patient' see PARA 15 note 6.

4 As to the meaning of 'process' see PARA 54 note 3. As to the modification of the duty of confidence in respect of the processing of information under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, see PARA 60.

5 Ie under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438: see PARAS 55, 58, 59. As to the enforcement of reg 7 see PARA 61.

6 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7(1)(a).

7 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7(1)(b).

8 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7(1)(c).

9 As to the meaning of 'month' see PARA 28 note 16.

10 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7(1)(d).

11 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7(1)(e). The statutory requirements are the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438.

12 le under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438.

13 'Health professional' means any of the following: a registered medical practitioner; a registered dentist as defined by the Dentists Act 1984 s 53(1) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 417); a registered dispensing optician or a registered optometrist within the meaning of the Opticians Act 1989 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 838, 839); a registered pharmacist or registered pharmacy technician within the meaning of the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (see **MEDICAL PROFESSIONS**); a registered nurse or midwife (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 717); a registered osteopath as defined by the Osteopaths Act 1993 s 41 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 503); a registered chiropractor as defined by the Chiropractors Act 1994 s 43 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 595); any person who is registered as a member of a profession to which the Health Professions Order 2001, SI 2002/254, for the time being extends (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 325); a clinical psychologist or child psychotherapist; a scientist employed by a health service body as head of a department: Data Protection Act 1998 s 69(1) (amended by SI 2002/253; SI 2002/254; SI 2003/1590; SI 2005/848; SI 2007/289); definition applied by the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7(3). 'Registered medical practitioner' includes any person who is provisionally registered under the Medical Act 1983 s 15 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 102) or s 21 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 108) and is engaged in such employment as is mentioned in s 15(3) or s 21(3): Data Protection Act 1998 s 69(2); definition applied by the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7(3). As to the meaning of 'registered medical practitioner' generally see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4. 'Health service body' means a strategic health authority established under the National Health Service Act 2006 s 13 (see PARA 94); a special health authority established under s 28 or the National Health Service (Wales) Act 2006 s 22 (see PARA 136); a primary care trust established under the National Health Service Act 2006 s 18 (see PARA 111); a local health board established under the National Health Service (Wales) Act 2006 s 11 (see PARA 75); a National Health Service trust first established under the National Health Service and Community Care Act 1990 s 5, the National Health Service Act 2006 s 25, or the National Health Service (Wales) Act 2006 s 18 (see PARA 155); an NHS foundation trust (see PARA 174); Data Protection Act 1998 s 69(3) (amended by SI 2000/90; the National Health Service Reform and Health Care Professions Act 2002 s 6(2), Sch 5 para 41; SI 2002/2469; the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 106, 107; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 190, 191); definition applied by the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7(3).

14 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7(2).

## UPDATE

### 57 Restrictions and exclusions

NOTE 13--1998 Act s 69(1) further amended to omit reference to a clinical psychologist: SI 2009/1182.

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## **58. Medical purposes related to the diagnosis or treatment of neoplasia.**

Subject as provided<sup>1</sup>, confidential patient information<sup>2</sup> relating to patients referred for the diagnosis or treatment of neoplasia may be processed<sup>3</sup> for medical purposes<sup>4</sup> which comprise or include: (1) the surveillance and analysis of health and disease<sup>5</sup>; (2) the monitoring and audit of health and health related care provision and outcomes where such provision has been made<sup>6</sup>; (3) the planning and administration of the provision made for health and health related care<sup>7</sup>; (4) medical research approved by research ethics committees<sup>8</sup>; (5) the provision of information about individuals who have suffered from a particular disease or condition where that information supports an analysis of the risk of developing that disease or condition<sup>9</sup>, and it is required for the counselling and support of a person who is concerned about the risk of developing that disease or condition<sup>10</sup>.

The processing of confidential patient information for the purposes specified in heads (1) to (4) above may be undertaken by persons who (either individually or as members of a class) are approved by the Secretary of State<sup>11</sup> and authorised by the person<sup>12</sup> who lawfully holds the information<sup>13</sup>. Where the Secretary of State considers that it is necessary in the public interest that confidential patient information is processed for such a purpose, he may give notice to any person who is so approved and authorised to require that person to process that information for that purpose and any such notice may require that the information is processed forthwith or within such period as is specified in the notice<sup>14</sup>.

A person who processes confidential patient information under these provisions must inform the Patient Information Advisory Group<sup>15</sup> of that processing and must make available to the Secretary of State such information as he may require to assist him in the investigation and audit of that processing and in his annual consideration of the statutory provisions<sup>16</sup> relating to the control of patient information<sup>17</sup>.

1 The subject to the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(2)-(4) (see note 3 and the text to notes 11-14) and reg 7 (see PARA 57). The Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, extend to England and Wales: see reg 1(5). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'patient information' see PARA 54 note 4; and as to the meaning of 'confidential patient information' see PARA 54 note 19. As to the meaning of 'patient' see PARA 15 note 6.

3 For these purposes, 'processing' includes (in addition to the use, disclosure or obtaining of information) any operations, or set of operations, which are undertaken in order to establish or maintain databases for the purposes set out in the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(1), including: (1) the recording and holding of information (reg 2(2)(a)); (2) the retrieval, alignment and combination of information (reg 2(2)(b)); (3) the organisation, adaptation or alteration of information (reg 2(2)(c)); (4) the blocking, erasure and destruction of information (reg 2(2)(d)). As to the modification of the duty of confidence in respect of the processing of information under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, see PARA 60.

4 As to the meaning of 'medical purposes' see PARA 54 note 5.

5 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(1)(a).

6 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(1)(b).

7 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(1)(c).

- 8 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(1)(d). As to the meaning of 'research ethics committee' see PARA 55 note 6.
- 9 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(1)(e)(i).
- 10 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(1)(e)(ii).
- 11 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(3)(a). As to the Secretary of State see PARA 6 note 8.
- 12 As to the meaning of 'person' in this context see PARA 17 note 2.
- 13 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(3)(b).
- 14 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(4). As to the enforcement of reg 2(4) see PARA 61. Any notice must be in writing, or transmitted by electronic means in a legible form which is capable of being used for subsequent reference: reg 1(3). As to the meaning of 'writing' see PARA 7 note 2.
- 15 As to the Patient Information Advisory Group see PARA 62.
- 16 In the consideration of the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, as required by the National Health Service Act 2006 s 251(5): see PARA 54.
- 17 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(5). As to the enforcement of reg 2(5) see PARA 61.

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## **59. Communicable disease and other risks to public health.**

Subject as provided<sup>1</sup>, confidential patient information<sup>2</sup> may be processed<sup>3</sup> with a view to:

- 28 (1) diagnosing communicable diseases and other risks to public health<sup>4</sup>;
- 29 (2) recognising trends in such diseases and risks<sup>5</sup>;
- 30 (3) controlling and preventing the spread of such diseases and risks<sup>6</sup>;
- 31 (4) monitoring and managing: (a) outbreaks of communicable disease<sup>7</sup>; (b) incidents of exposure to communicable disease<sup>8</sup>; (c) the delivery, efficacy and safety of immunisation programmes<sup>9</sup>; (d) adverse reactions to vaccines and medicines<sup>10</sup>; (e) risks of infection acquired from food or the environment (including water supplies)<sup>11</sup>; (f) the giving of information to persons<sup>12</sup> about the diagnosis of communicable disease and risks of acquiring such disease<sup>13</sup>.

The processing of confidential patient information for the purposes specified in heads (1) to (4) above may be undertaken by persons employed or engaged for the purposes of the health service<sup>14</sup>, and other persons employed or engaged by a government department or other public authority<sup>15</sup> in communicable disease surveillance<sup>16</sup>. Where the Secretary of State<sup>17</sup> considers that it is necessary to process patient information for a purpose specified in heads (1) to (4) above, he may give notice<sup>18</sup> to any such body or person to require that person or body to process that information for that purpose and any such notice may require that the information is processed forthwith or within such period as is specified in the notice<sup>19</sup>.

Where confidential information is processed under these provisions, the bodies and persons undertaking the processing must make available to the Secretary of State such information as he may require to assist him in the investigation and audit of that processing and in his annual consideration of the statutory provisions<sup>20</sup> relating to the control of patient information<sup>21</sup>.

1 The subject to the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(2) and (3) (see note 3 and the text to notes 14-16) and reg 7 (see PARA 57). The Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, extend to England and Wales: see reg 1(5). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'patient information' see PARA 54 note 4; and as to the meaning of 'confidential patient information' see PARA 54 note 19. As to the meaning of 'patient' see PARA 15 note 6.

3 For these purposes, 'processing' includes any operations, or set of operations set out in the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(2) (see PARA 58) which are undertaken for the purposes set out in reg 3(1): reg 3(2). As to the meaning of 'processing' generally see PARA 54 note 3. As to the modification of the duty of confidence in respect of the processing of information under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, see PARA 60.

4 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(1)(a). As to the prevention and control of disease generally see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 884 et seq.

5 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(1)(b).

6 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(1)(c).

7 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(1)(d)(i).

- 8 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(1)(d)(ii). As to the standard of care owed by health authorities when informing patients that they may have been put at risk of contracting HIV following treatment by an infected health care worker, see *AB v Tameside and Glossop Health Authority* (1996) 35 BMLR 79, [1997] 8 Med LR 91, CA.
- 9 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(1)(d)(iii).
- 10 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(1)(d)(iv). As to vaccine damage payments see PARA 829 et seq.
- 11 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(1)(d)(v). As to food safety and hygiene see **FOOD** vol 18(2) (Reissue) PARA 282 et seq. As to the control of environmental pollution see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**. As to the protection of water resources and the prevention of pollution to water supplies see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**.
- 12 As to the meaning of 'person' see PARA 17 note 2.
- 13 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(1)(d)(vi).
- 14 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(3)(b). As to the meaning of 'health service' see PARA 10 note 3.
- 15 'Public authority' has the same meaning as in the Freedom of Information Act 2000 s 3(1) (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583): Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 1(2).
- 16 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(3)(c).
- 17 As to the Secretary of State see PARA 6 note 8.
- 18 Any such notice must be in writing, or transmitted by electronic means in a legible form which is capable of being used for subsequent reference: Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 1(3). As to the meaning of 'writing' see PARA 7 note 2.
- 19 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(4). As to the enforcement of this provision see PARA 61.
- 20 In the consideration of the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, as required by the National Health Service Act 2006 s 251(5): see PARA 54.
- 21 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(5). As to the enforcement of this provision see PARA 61.

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## **60. Modifying the obligation of confidence.**

Anything done by a person<sup>1</sup> that is necessary for the purpose of processing<sup>2</sup> confidential patient information<sup>3</sup> in accordance with the statutory provisions relating to the control of patient information<sup>4</sup> must be taken to be lawfully done despite any obligation of confidence owed by that person in respect of it<sup>5</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the meaning of 'processing' see PARA 54 note 3. See also PARAS 58 note 3 and 59 note 3.

3 As to the meaning of 'patient information' see PARA 54 note 4; and as to the meaning of 'confidential patient information' see PARA 54 note 19. As to the meaning of 'patient' see PARA 15 note 6.

4 Ie in accordance with the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438.

5 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 4. The Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, extend to England and Wales: see reg 1(5). As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the law relating to confidence in relation to medical information see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 439 et seq.

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## **61. Enforcement procedure.**

Any person<sup>1</sup> who does not comply:

- 32 (1) with a requirement imposed on him under a notice in respect of the processing of patient information relating to patients referred for the diagnosis or treatment of neoplasia<sup>2</sup>, or to communicable diseases and other risks to public health<sup>3</sup>; or
- 33 (2) with a requirement to provide the Secretary of State<sup>4</sup> with certain information<sup>5</sup>; or
- 34 (3) with the restrictions and exclusions relating to the processing of patient information<sup>6</sup>,

may be subject to a civil penalty not exceeding £5,000<sup>7</sup>.

The Secretary of State may determine whether any person has not complied with such a requirement and he may assess whether it is appropriate to impose the maximum civil penalty, a lesser penalty or no penalty having regard to the seriousness of any non-compliance, the circumstances of any person who has not complied, and the need to ensure the compliance in respect of any such future requirements<sup>8</sup>. Any penalty payable under these provisions is recoverable by the Secretary of State as a civil debt<sup>9</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 I.e a notice under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(4): see PARA 58.

3 I.e a notice under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 3(4): see PARA 59.

4 As to the Secretary of State see PARA 6 note 8.

5 I.e a requirement under the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 2(5) (see PARA 58) or reg 3(5) (see PARA 59).

6 I.e with the Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 7: see PARA 57.

7 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 8(1). The Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, extend to England and Wales: see reg 1(5). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

8 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 8(2).

9 Health Service (Control of Patient Information) Regulations 2002, SI 2002/1438, reg 8(3). As to the summary recovery of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/F. PATIENT INFORMATION/(B) Patient Information Advisory Group/62. Patient Information Advisory Group.

## (B) PATIENT INFORMATION ADVISORY GROUP

### 62. Patient Information Advisory Group.

There continues to be a committee known as the Patient Information Advisory Group<sup>1</sup>. Before laying before Parliament a draft of any statutory instrument containing regulations relating to the processing<sup>2</sup> of patient information<sup>3</sup> for medical purposes<sup>4</sup>, or making any further regulations relating thereto<sup>5</sup>, the Secretary of State<sup>6</sup> must seek and have regard to the views of the Advisory Group on the proposed regulations<sup>7</sup>. The Secretary of State may seek the views of the Advisory Group on such other matters connected with the processing of patient information or of any information (other than patient information) obtained or generated in the course of the provision of the health service<sup>8</sup>, as he considers appropriate<sup>9</sup>.

The Secretary of State may by regulations<sup>10</sup> make provision about the Patient Information Advisory Group and the regulations may, in particular, make provision as to: (1) the persons<sup>11</sup> or bodies who are to be represented by members of the Advisory Group<sup>12</sup>; (2) the terms of appointment of members<sup>13</sup>; (3) the proceedings of the Advisory Group<sup>14</sup>; and (4) the payment by the Secretary of State of such expenses incurred by the Advisory Group<sup>15</sup>, and such allowances in respect of expenses incurred by members of the Advisory Group<sup>16</sup>, as he may determine<sup>17</sup>.

1 National Health Service Act 2006 s 252(1). All members of the Patient Information Advisory Group are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (amended by the Health and Social Care Act 2001 s 67(1), Sch 5 Pt 3 para 17); and **PARLIAMENT** vol 78 (2010) PARA 905.

2 As to the meaning of 'processing' see PARA 54 note 3: definition applied by the National Health Service Act 2006 s 252(6).

3 As to the meaning of 'patient information' see PARA 54 note 4: definition applied by National Health Service Act 2006 s 252(6).

4 Ie under the National Health Service Act 2006 s 251(1): see PARA 54.

5 Ie pursuant to the National Health Service Act 2006 s 251(5)(b): see PARA 54.

6 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the National Health Service Act 2006 s 252 and therefore this section applies to both England and Wales: see s 271(3)(g); and PARA 6. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

7 National Health Service Act 2006 s 252(2). The Secretary of State must publish, in such manner as he considers appropriate, any views which he receives from the Advisory Group pursuant to s 252(2): s 252(5).

8 As to the meaning of 'health service' see PARA 10 note 3.

9 National Health Service Act 2006 s 252(3).

10 As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 252(4): the Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836; see PARAS 63-65.

11 As to the meaning of 'person' see PARA 17 note 2.

12 National Health Service Act 2006 s 252(4)(a).

- 13 National Health Service Act 2006 s 252(4)(b).
- 14 National Health Service Act 2006 s 252(4)(c).
- 15 National Health Service Act 2006 s 252(4)(d)(i).
- 16 National Health Service Act 2006 s 252(4)(d)(ii).
- 17 National Health Service Act 2006 s 252(4)(d).

## **UPDATE**

### **62-65 [National Information Governance Board for Health and Social Care]**

Replaced.

The Patient Information Advisory Service has been abolished: National Health Service Act 2006 s 250A(2) (ss 250A-250D added by the Health and Social Care Act 2008 s 157(1)).

A body corporate known as the National Information Governance Board for Health and Social Care has been established: National Health Service Act 2006 s 250A(1). The Board's functions are (1) to monitor the practice followed by relevant bodies in relation to the processing of relevant information; (2) to keep the Secretary of State, and such bodies as the Secretary of State may designate by direction, informed about the practice being followed by relevant bodies in relation to the processing of relevant information; (3) to publish guidance on the practice to be followed in relation to the processing of relevant information; (4) to advise the Secretary of State on particular matters relating to the processing of relevant information by any person; and (5) to advise persons who process relevant information on such matters relating to the processing of relevant information by them as the Secretary of State may from time to time designate by direction: see s 250A(2)-(4), (9). The Board must, in exercising its functions, seek to improve the practice followed by relevant bodies in relation to the processing of relevant information: see s 250A(3), (9). See further s 250A(4)-(9). The Board's functions are restricted in relation to Wales: see s 250B. The Secretary of State may by regulations make provision about the Board: s 250C. See the National Information Governance Board for Health and Social Care Regulations 2008, SI 2008/2558, which apply only in relation to England. The Board must prepare an annual report on its activities during the year and send a copy of the report to the Secretary of State: National Health Service Act 2006 s 250D. The Secretary of State must consult the Board before he makes patient information regulations under s 251: s 252 (substituted by the Health and Social Care Act 2008 s 158).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/F. PATIENT INFORMATION/(B) Patient Information Advisory Group/63. Membership.

### **63. Membership.**

The Patient Information Advisory Group<sup>1</sup> consists of not less than 12 nor more than 20 members<sup>2</sup>. The Secretary of State<sup>3</sup> appoints members of the Advisory Group for a period of three years and, where a person has ceased to be a member of the Advisory Group during the period of his appointment, the Secretary of State may appoint another person for the remainder of that period<sup>4</sup>. The Secretary of State may re-appoint a person to the Advisory Group where the re-appointment does not extend that person's periods of membership beyond nine years<sup>5</sup>. The Secretary of State may terminate the membership of any member of the Advisory Group if he considers that member's continued membership of the Advisory Group to be contrary to the interests of the health service<sup>6</sup> or when a member is unable to participate in the Advisory Group due to ill health<sup>7</sup>. Any member of the Advisory Group may submit his resignation from the Advisory Group to the chairman of that group<sup>8</sup>.

The Secretary of State must designate one of the members of the Advisory Group as its chairman<sup>9</sup>. For any period during which the chairman is unable to discharge his duties, the Advisory Group may by a majority vote elect a member of that group to be vice chairman to perform them<sup>10</sup>.

1 As to the Patient Information Advisory Group see PARA 62.

2 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 2(2). The Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, extend to England and Wales: see reg 1(3). As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the reimbursement of loss of earnings or expenses arising out of the performance of duties as a member of the Advisory Group see PARA 65.

3 As to the Secretary of State see PARA 6 note 8.

4 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 3(1). Appointments must be made in writing or transmitted by electronic means in a legible form which is capable of being used for subsequent reference: reg 3(5). As to the meaning of 'writing' see PARA 7 note 2. As to the exercise of the Secretary of State's appointment functions by the Appointments Commission see PARA 820.

5 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 3(2) (amended by SI 2007/2009).

6 As to the meaning of 'health service' see PARA 10 note 3.

7 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 3(3).

8 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 3(4). Resignations must be made in writing or transmitted by electronic means in a legible form which is capable of being used for subsequent reference: reg 3(5).

9 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 4(1).

10 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 4(2).

### **UPDATE**

### **62-65 [National Information Governance Board for Health and Social Care]**

Replaced.

The Patient Information Advisory Service has been abolished: National Health Service Act 2006 s 250A(2) (ss 250A-250D added by the Health and Social Care Act 2008 s 157(1)).

A body corporate known as the National Information Governance Board for Health and Social Care has been established: National Health Service Act 2006 s 250A(1). The Board's functions are (1) to monitor the practice followed by relevant bodies in relation to the processing of relevant information; (2) to keep the Secretary of State, and such bodies as the Secretary of State may designate by direction, informed about the practice being followed by relevant bodies in relation to the processing of relevant information; (3) to publish guidance on the practice to be followed in relation to the processing of relevant information; (4) to advise the Secretary of State on particular matters relating to the processing of relevant information by any person; and (5) to advise persons who process relevant information on such matters relating to the processing of relevant information by them as the Secretary of State may from time to time designate by direction: see s 250A(2)-(4), (9). The Board must, in exercising its functions, seek to improve the practice followed by relevant bodies in relation to the processing of relevant information: see s 250A(3), (9). See further s 250A(4)-(9). The Board's functions are restricted in relation to Wales: see s 250B. The Secretary of State may by regulations make provision about the Board: s 250C. See the National Information Governance Board for Health and Social Care Regulations 2008, SI 2008/2558, which apply only in relation to England. The Board must prepare an annual report on its activities during the year and send a copy of the report to the Secretary of State: National Health Service Act 2006 s 250D. The Secretary of State must consult the Board before he makes patient information regulations under s 251: s 252 (substituted by the Health and Social Care Act 2008 s 158).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/F. PATIENT INFORMATION/(B) Patient Information Advisory Group/64. Meetings.

#### **64. Meetings.**

The Patient Information Advisory Group<sup>1</sup> must meet at least four times a year<sup>2</sup>. The quorum for the meetings of the Advisory Group is at least half the membership of the Advisory Group<sup>3</sup>. Where members of the Advisory Group hold differing views on any matter which falls for a decision a majority vote is decisive<sup>4</sup>. The proceedings of the formal meetings of the Advisory Group, including minutes and any recommendations of the Advisory Group to the Secretary of State<sup>5</sup>, and the attendance list at the formal meetings of that group must be publicly available<sup>6</sup>.

The Secretary of State must appoint a secretary to the Advisory Group whose duties include the taking of minutes at the formal meetings of the Advisory Group<sup>7</sup>. The secretary to the Advisory Group must be in attendance at all the formally constituted meetings of the Advisory Group<sup>8</sup>. In the event that the secretary to the Advisory Group is unable to attend any meeting of the Advisory Group, the chairman<sup>9</sup> of the Advisory Group must nominate another person to act as the secretary to that group<sup>10</sup>.

1 As to the Patient Information Advisory Group see PARA 62.

2 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 5(1). The Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, extend to England and Wales: see reg 1(3). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 5(7). As to membership of the group see PARA 63.

4 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 5(5). The outcome of a vote on matters where the members of the Advisory Group hold differing views must be formally recorded as votes for a particular view, decision or recommendation and votes against a particular view, decision or recommendation: reg 5(6).

5 As to the Secretary of State see PARA 6 note 8.

6 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 5(8).

7 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 5(2).

8 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 5(3).

9 As to the chairman see PARA 63.

10 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 5(4).

#### **UPDATE**

#### **62-65 [National Information Governance Board for Health and Social Care]**

Replaced.

The Patient Information Advisory Service has been abolished: National Health Service Act 2006 s 250A(2) (ss 250A-250D added by the Health and Social Care Act 2008 s 157(1)).

A body corporate known as the National Information Governance Board for Health and Social Care has been established: National Health Service Act 2006 s 250A(1). The Board's functions are (1) to monitor the practice followed by relevant bodies in relation to the processing of relevant information; (2) to keep the Secretary of State, and such bodies as the Secretary of State may designate by direction, informed about the practice being followed by relevant bodies in relation to the processing of relevant information; (3) to publish guidance on the practice to be followed in relation to the processing of relevant information; (4) to advise the Secretary of State on particular matters relating to the processing of relevant information by any person; and (5) to advise persons who process relevant information on such matters relating to the processing of relevant information by them as the Secretary of State may from time to time designate by direction: see s 205A(2)-(4), (9). The Board must, in exercising its functions, seek to improve the practice followed by relevant bodies in relation to the processing of relevant information: see s 250A(3), (9). See further s 250A(4)-(9). The Board's functions are restricted in relation to Wales: see s 250B. The Secretary of State may by regulations make provision about the Board: s 250C. See the National Information Governance Board for Health and Social Care Regulations 2008, SI 2008/2558, which apply only in relation to England. The Board must prepare an annual report on its activities during the year and send a copy of the report to the Secretary of State: National Health Service Act 2006 s 205D. The Secretary of State must consult the Board before he makes patient information regulations under s 251: s 252 (substituted by the Health and Social Care Act 2008 s 158).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/F. PATIENT INFORMATION/(B) Patient Information Advisory Group/65. Expenses, accommodation and secretariat.

## **65. Expenses, accommodation and secretariat.**

The Secretary of State<sup>1</sup> must provide such accommodation and secretarial and administrative support to the Patient Information Advisory Group<sup>2</sup> for the performance of its functions as he may determine<sup>3</sup>. The Secretary of State must make payments to the Advisory Group in respect of any expenses which it incurs in the performance of its duties<sup>4</sup>. Where any member<sup>5</sup> of the Advisory Group has suffered a loss of earnings or has incurred expenses solely to enable him to perform his duties as a member of the Advisory Group, the Secretary of State must pay to that member a sum sufficient to defray that loss or reimburse that expense<sup>6</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Patient Information Advisory Group see PARA 62.

3 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 7. The Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, extend to England and Wales: see reg 1(3). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 6(1).

5 As to membership of the Patient Information Advisory Group see PARA 63.

6 Patient Information Advisory Group (Establishment) Regulations 2001, SI 2001/2836, reg 6(2).

## **UPDATE**

### **62-65 [National Information Governance Board for Health and Social Care]**

Replaced.

The Patient Information Advisory Service has been abolished: National Health Service Act 2006 s 250A(2) (ss 250A-250D added by the Health and Social Care Act 2008 s 157(1)).

A body corporate known as the National Information Governance Board for Health and Social Care has been established: National Health Service Act 2006 s 250A(1). The Board's functions are (1) to monitor the practice followed by relevant bodies in relation to the processing of relevant information; (2) to keep the Secretary of State, and such bodies as the Secretary of State may designate by direction, informed about the practice being followed by relevant bodies in relation to the processing of relevant information; (3) to publish guidance on the practice to be followed in relation to the processing of relevant information; (4) to advise the Secretary of State on particular matters relating to the processing of relevant information by any person; and (5) to advise persons who process relevant information on such matters relating to the processing of relevant information by them as the Secretary of State may from time to time designate by direction: see s 205A(2)-(4), (9). The Board must, in exercising its functions, seek to improve the practice followed by relevant bodies in relation to the processing of relevant information: see s 250A(3), (9). See further s 250A(4)-(9). The Board's functions are restricted in relation to Wales: see s 250B. The Secretary of State may by regulations make provision about the Board: s 250C. See the National

Information Governance Board for Health and Social Care Regulations 2008, SI 2008/2558, which apply only in relation to England. The Board must prepare an annual report on its activities during the year and send a copy of the report to the Secretary of State: National Health Service Act 2006 s 205D. The Secretary of State must consult the Board before he makes patient information regulations under s 251: s 252 (substituted by the Health and Social Care Act 2008 s 158).



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/G. TRUSTS/66. Special trustees for university hospital or teaching hospital.

## **G. TRUSTS**

### **66. Special trustees for university hospital or teaching hospital.**

Special trustees<sup>1</sup> appointed by the Secretary of State, in relation to England, in respect of a hospital formerly controlled and managed by a University Hospital Management Committee or a Board of Governors, must hold and administer the property<sup>2</sup> transferred<sup>3</sup> to them<sup>4</sup>. Special trustees have power to accept, hold and administer any property on trust, being a trust which is wholly or mainly for hospitals for which they are appointed, for all or any purposes relating to hospital services (including research)<sup>5</sup>, or any other part of the health service<sup>6</sup> associated with hospitals<sup>7</sup>.

The number of special trustees appointed<sup>8</sup> is such as the Secretary of State may from time to time determine after consultation with such persons<sup>9</sup> as he considers appropriate<sup>10</sup>. The term of office of any special trustee must be fixed by the Secretary of State, but a special trustee may be removed by the Secretary of State at any time during the special trustee's term of office<sup>11</sup>.

1 'Special trustees' are trustees appointed by the Secretary of State in relation to England under the National Health Service Reorganisation Act 1973 s 29 (repealed), the National Health Service Act 1977 s 95 (repealed), and the National Health Service Act 2006 s 212, for any hospital which, immediately before 1 April 1974 (being the day appointed for the purposes of the National Health Service Reorganisation Act 1973 s 29 (repealed)), was controlled and managed by a University Hospital Management Committee or a Board of Governors, other than a body on whose request an order was made under s 24(2) (repealed) or a preserved Board within the meaning of s 15(6) (repealed): National Health Service Act 2006 s 212(1), (2). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the exercise of the Secretary of State's appointment functions by the Appointments Commission see PARA 820. As to the meaning of 'hospital' see PARA 12 note 4. As to the equivalent provision to the National Health Service Act 2006 s 212 in relation to Wales see the National Health Service (Wales) Act 2006 s 160.

2 As to the meaning of 'property' see PARA 4 note 9.

3 Ie under the National Health Service Reorganisation Act 1973 (repealed).

4 See the National Health Service Act 2006 s 212(3). Section 212(3) is subject to s 213 (see PARA 67) and s 214 (see PARA 68): s 212(7). As to additional provision relating to trusts see PARA 71.

5 National Health Service Act 2006 s 212(5)(a).

6 As to the meaning of 'health service' see PARA 10 note 3.

7 National Health Service Act 2006 s 212(5)(b).

8 Ie under the National Health Service Act 2006 s 212.

9 As to the meaning of 'person' see PARA 17 note 2.

10 National Health Service Act 2006 s 212(4).

11 National Health Service Act 2006 s 212(6).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/G. TRUSTS/67. Transfers of trust property.

## **67. Transfers of trust property.**

Having regard to any change or proposed change in the arrangements for the administration of a hospital<sup>1</sup> or other establishment or facility<sup>2</sup>, or in the area or functions<sup>3</sup> of any NHS body<sup>4</sup> other than an NHS foundation trust<sup>5</sup>, the Secretary of State<sup>6</sup> may, by order<sup>7</sup> provide for the transfer of any trust property<sup>8</sup> from any relevant health service body<sup>9</sup> to any other relevant health service body<sup>10</sup>. Where property is transferred by such an order to two or more bodies, it must be apportioned by them in such proportions as they may agree, or as may in default of agreement be determined by the Secretary of State, and the order may provide for the way in which the property must be apportioned<sup>11</sup>. Where property is so apportioned, the Secretary of State may by order make any consequential amendments of the trust instrument relating to the property<sup>12</sup>.

1 As to the meaning of 'hospital' see PARA 12 note 4.

2 National Health Service Act 2006 s 213(1)(a).

3 As to the meaning of 'functions' see PARA 6 note 3.

4 As to the meaning of 'NHS body' see PARA 8 note 2.

5 National Health Service Act 2006 s 213(1)(b). As to NHS foundation trusts see PARA 174.

6 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 213 in relation to Wales see the National Health Service (Wales) Act 2006 s 161.

7 As to the making of orders see PARA 9. Orders under the National Health Service Act 2006 s 213 are treated as local in nature and are not recorded in this work.

8 As to the meaning of 'property' see PARA 4 note 9.

9 'Relevant health service body' means an NHS body, special trustees, or trustees for a primary care trust, an NHS trust, or an NHS foundation trust: National Health Service Act 2006 s 213(2). As to the meaning of 'special trustees' see PARA 66 note 1. In s 213 'special trustees' includes special trustees within the meaning of the National Health Service (Wales) Act 2006 s 160: National Health Service Act 2006 s 213(5). As to trustees for a primary care trust see PARA 123. As to trustees for an NHS trust see PARA 166.

10 National Health Service Act 2006 s 213(1). As to the exercise of the trustees' discretion in respect of trust property transferred under s 213 see PARA 70. As to additional provision relating to trusts see PARA 71. Generally the records of health service hospitals are public records but records of property or trust property passing to certain health bodies under s 213 or the National Health Service (Wales) Act 2006 s 161 are excluded: see the Public Records Act 1958 s 10(1), Sch 1 para 3 Table Pt I; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835 et seq.

11 National Health Service Act 2006 s 213(3).

12 National Health Service Act 2006 s 213(4).

## **UPDATE**

### **67 Transfers of trust property**

NOTE 10--The National Health Service (Transfer of Residual Estate) (Wales) Order 2009, SI 2009/2617, provides for the transfer of the residual estate from the Welsh Ministers to the specified National Health Service bodies.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/G. TRUSTS/68. Transfer of functions and property to or from special trustees.

## **68. Transfer of functions and property to or from special trustees.**

If it appears to the Secretary of State<sup>1</sup> at any time that all the functions<sup>2</sup> of any special trustees<sup>3</sup> should be discharged by a primary care trust<sup>4</sup>, an NHS trust<sup>5</sup>, a special health authority<sup>6</sup> or an NHS foundation trust<sup>7</sup>, he may by order<sup>8</sup> provide for the transfer of all trust property<sup>9</sup> from the special trustees to the body or, in such proportions as may be specified in the order, to those bodies<sup>10</sup>.

If it appears to the Secretary of State at any time that the functions of any special trustees should be discharged by the trustees for a primary care trust, an NHS trust or an NHS foundation trust (known for these purposes as the 'trustees of the body')<sup>11</sup>, or the functions of the trustees of the body should be discharged by special trustees<sup>12</sup>, he may, after consulting the special trustees and the trustees of the body, by order provide for the transfer of all trust property from the special trustees to the trustees of the body, or from the trustees of the body to the special trustees<sup>13</sup>.

Where property is transferred by an order under these provisions to two or more bodies, it must be apportioned by them in such proportions as they may agree, or as may in default of agreement be determined by the Secretary of State, and the order may provide for the way in which the property must be apportioned<sup>14</sup>. Where property is so apportioned, the Secretary of State may by order make any consequential amendments of the trust instrument relating to the property<sup>15</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 214 in relation to Wales see the National Health Service (Wales) Act 2006 s 162.

2 As to the meaning of 'functions' see PARA 6 note 3.

3 As to the meaning of 'special trustees' see PARA 66 note 1. For these purposes 'special trustees' includes special trustees within the meaning of the National Health Service (Wales) Act 2006 s 160: National Health Service Act 2006 s 214(6).

4 As to primary care trusts see PARA 111 et seq.

5 As to NHS trusts see PARA 155.

6 As to special health authorities see PARA 136.

7 As to NHS foundation trusts see PARA 174.

8 As to the making of orders see PARA 9. Orders under the National Health Service Act 2006 s 214 are treated as local in nature and are not recorded in this work.

9 As to the meaning of 'property' see PARA 4 note 9.

10 National Health Service Act 2006 s 214(1). Before acting under s 214(1) the Secretary of State must consult the special trustees and other bodies concerned: s 214(2). As to the exercise of the trustees' discretion in respect of trust property transferred under s 214 see PARA 70. As to additional provision relating to trusts see PARA 71. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

11 National Health Service Act 2006 s 214(3)(a). As to trustees for a primary care trust see PARA 123. As to trustees for an NHS trust see PARA 166. As to trustees for an NHS foundation trust see PARA 186.

12 National Health Service Act 2006 s 214(3)(b).

- 13 National Health Service Act 2006 s 214(3).
- 14 National Health Service Act 2006 s 214(4).
- 15 National Health Service Act 2006 s 214(5).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/G. TRUSTS/69. Trustees and donated property.

## **69. Trustees and donated property.**

Where property<sup>1</sup> is given<sup>2</sup> to or on trust for any purposes of a hospital<sup>3</sup> for which special trustees<sup>4</sup> have been appointed, the property may be held, administered and applied by the special trustees instead of by the body responsible for the hospital<sup>5</sup> if that body and the special trustees agree<sup>6</sup>.

Where property is given<sup>7</sup>: (1) on trust for any purposes of a primary care trust for which trustees have been appointed<sup>8</sup>; (2) on trust for any purposes of an NHS trust for which trustees have been appointed<sup>9</sup>; or (3) on trust for any purposes of an NHS foundation trust for which trustees have been appointed<sup>10</sup>, and the trustees and the primary care trust, NHS trust or NHS foundation trust agree, the property may be held, administered and applied by the trustees instead of by the primary care trust, NHS trust or NHS foundation trust<sup>11</sup>.

Property given<sup>12</sup> on trust may be transferred by order of the Secretary of State<sup>13</sup> in the same circumstances as other trust property may<sup>14</sup> be transferred<sup>15</sup>.

1 As to the meaning of 'property' see PARA 4 note 9.

2 Ie in pursuance of the National Health Service Act 2006 s 222 (power of NHS bodies to raise money): see PARA 78.

3 As to the meaning of 'hospital' see PARA 12 note 4.

4 As to the meaning of 'special trustees' see PARA 66 note 1.

5 The body responsible for a hospital is, in the case of a hospital vested in an NHS trust or an NHS foundation trust, that trust (National Health Service Act 2006 s 215(2)(a)) and, in any other case, the strategic health authority or primary care trust exercising functions of the Secretary of State in respect of the hospital (s 215(2)(b)). As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111 et seq. As to the delegation of the functions of the Secretary of State see PARA 7. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 215 in relation to Wales see the National Health Service (Wales) Act 2006 s 163.

6 National Health Service Act 2006 s 215(1).

7 Ie in pursuance of the National Health Service Act 2006 s 222: see PARA 78.

8 National Health Service Act 2006 s 215(3)(a). The appointment of trustees is that under Sch 3 para 12: see PARA 123.

9 National Health Service Act 2006 s 215(3)(b). The appointment of trustees is that under Sch 4 para 10 or the National Health Service (Wales) Act 2006 Sch 3 para 10: see PARA 166.

10 National Health Service Act 2006 s 215(3)(c). The appointment of trustees is that under s 51: see PARA 186.

11 National Health Service Act 2006 s 215(4).

12 Ie in pursuance of the National Health Service Act 2006 s 222: see PARA 78.

13 Ie under the National Health Service Act 2006 s 213 (see PARA 67) or s 214 (see PARA 68).

14 Ie under either of the National Health Service Act 2006 s 213 or 214.

15 National Health Service Act 2006 s 215(5).

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## **70. Application of trust property: exercise of trustees' discretion.**

Any discretion given by a trust instrument to the trustees of property<sup>1</sup> transferred to them<sup>2</sup> is exercisable by the person<sup>3</sup> to whom the property is so transferred and the transfer does not affect the trusts on which the property is held<sup>4</sup>. Where property has been transferred<sup>5</sup>, and any discretion is given by a trust instrument to the trustees to apply the property, or income arising from the property, to such hospital services (including research) as the trustees consider appropriate without any restriction on the kinds of hospital services and without any restriction to one or more specified hospitals<sup>6</sup>, the discretion is enlarged so as to allow the application of the property or of the income arising from the property, to such extent as the trustees consider appropriate, for any other part of the health service<sup>7</sup> associated with any hospital<sup>8</sup>.

1 As to the meaning of 'property' see PARA 4 note 9.

2 Ie under the National Health Service Reorganisation Act 1973 s 24 (repealed) (transfer of trust property from abolished authorities) or s 25 (repealed) (transfer of trust property held for health services by local health authorities), the National Health Service Act 1977 s 92 (repealed) (further transfers of trust property), or the National Health Service Act 2006 s 213 (see PARA 67) or s 214 (see PARA 68): s 216(1)(a)-(d).

3 As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service Act 2006 s 216(1). This provision is expressed to be subject to s 216: see the text to notes 5-8. As to the equivalent provision to the National Health Service Act 2006 s 216 in relation to Wales see the National Health Service (Wales) Act 2006 s 164. As to additional provision relating to trusts see PARA 71.

5 National Health Service Act 2006 s 216(2)(a). The transfer referred to is that under the National Health Service Reorganisation Act 1973 s 24 (repealed), or the National Health Service Act 1977 s 92 (repealed): National Health Service Act 2006 s 216(2)(a).

6 National Health Service Act 2006 s 216(2)(b). As to the meaning of 'hospital' see PARA 12 note 4.

7 As to the meaning of 'health service' see PARA 10 note 3.

8 National Health Service Act 2006 s 216(2). Section 216(2) applies on any subsequent transfer of the property under s 213 (see PARA 67) or s 214 (see PARA 68): s 216(3).



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## 71. Trusts: supplementary provisions.

A provision contained in a provision of the National Health Service Act 2006<sup>1</sup> for the transfer of any property on trust<sup>2</sup> includes provision for the transfer of any rights and liabilities arising from that property<sup>3</sup>. Where a transfer of property by virtue of such a provision is of, or includes land<sup>4</sup> held on lease from a third party<sup>5</sup>, or any other asset leased or hired from a third party or in which a third party has an interest<sup>6</sup>, the transfer is binding on the third party notwithstanding that it would have otherwise<sup>7</sup> required his consent or concurrence<sup>8</sup>. Nothing in such a provision affects any power of Her Majesty, the court<sup>9</sup> or any other person, to alter the trusts of any charity<sup>10</sup>.

1 National Health Service Act 2006 s 217(2)(a). The provisions of the National Health Service Act 2006 referred to are: s 51(1)-(3) (see PARA 186); ss 212-214 (see PARAS 66-68); s 216 (see PARA 70); s 218 (see PARA 72); s 220 (see PARA 73); Sch 2 para 12 (see PARA 109) and para 13 (see PARA 104); Sch 3 para 12 (see PARA 123); Sch 4 para 10 (see PARA 166); and Sch 6 para 8 (see PARA 143) and para 9 (see PARA 141): see s 217(1). Nothing in the Finance Act 1895 s 12 (which requires certain Acts and certain instruments relating to the vesting of property by virtue of an Act to be stamped as conveyances on sale: see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1050) applies to: (1) a provision listed above; or (2) an order made in pursuance of any such provision: National Health Service Act 2006 s 217(6). Stamp duty is not payable on an order falling within head (2): s 217(7).

2 See the National Health Service Act 2006 s 217(2)(b). As to the meaning of 'property' see PARA 4 note 9.

3 National Health Service Act 2006 s 217(2). As to the equivalent provision to the National Health Service Act 2006 s 217 in relation to Wales see the National Health Service (Wales) Act 2006 s 165.

4 As to the meaning of 'land' see PARA 24 note 2.

5 National Health Service Act 2006 s 217(3)(a). 'Third party' means a person other than the Secretary of State or an NHS body: s 217(4). As to the meaning of 'person' see PARA 17 note 2. As to the Secretary of State see PARA 6 note 8. As to the meaning of 'NHS body' see PARA 8 note 2.

6 National Health Service Act 2006 s 217(3)(b).

7 Ie apart from the National Health Service Act 2006 s 217(3).

8 National Health Service Act 2006 s 217(3).

9 'Court' means the High Court and, within the limits of its jurisdiction, any other court in England and Wales having a jurisdiction in respect of charities concurrent (within any limit of area or amount) with that of the High Court, and includes any judge or officer of the court exercising the jurisdiction of the court: Charities Act 1993 s 97(1); definition applied by the National Health Service Act 2006 s 217(5). As to the High Court of Justice in England and Wales see **COURTS** vol 10 (Reissue) PARA 602 et seq.

10 National Health Service Act 2006 s 217(5). As to the alteration of the trusts of a charity see **CHARITIES** vol 8 (2010) PARA 145.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/G. TRUSTS/72. Private trusts for hospitals.

## 72. Private trusts for hospitals.

Where the terms of a trust instrument authorise or require the trustees, whether immediately or in the future, to apply any part of the capital or income of the trust property<sup>1</sup> for the purposes of any health service hospital<sup>2</sup>, the trust instrument must be construed as authorising or requiring the trustees to apply the trust property to the like extent, and at the like times, for the purpose of making payments, whether of capital or income, to the appropriate hospital authority<sup>3</sup>. Any sum paid to the appropriate hospital authority must, so far as practicable, be applied by it for the purpose specified in the trust instrument<sup>4</sup>.

1 As to the meaning of 'property' see PARA 4 note 9.

2 National Health Service Act 2006 s 218(1). As to the meaning of 'health service hospital' see PARA 21 note 7. For these purposes 'health service hospital' includes such a hospital within the meaning of the National Health Service (Wales) Act 2006 s 206 (see PARA 21 note 7); National Health Service Act 2006 s 218(6). Nothing in s 218 applies to property transferred under the National Health Service Reorganisation Act 1973 s 24 (repealed); National Health Service Act 2006 s 218(5). Generally the records of health service hospitals are public records but records of property held by certain health bodies under s 218 are excluded: see the Public Records Act 1958 s 10(1), Sch 1 para 3 Table Pt I; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835 et seq.

3 National Health Service Act 2006 s 218(2). 'Appropriate hospital authority' means: (1) where special trustees are appointed for the hospital, those trustees (s 218(4)(a)); (2) where the hospital is managed by, and trustees have been appointed for, an NHS trust, an NHS foundation trust or primary care trust, the trustees (s 218(4)(b)); (3) where the hospital is managed by an NHS trust, an NHS foundation trust or primary care trust and neither head (1) nor head (2) applies, the NHS trust, NHS foundation trust or primary care trust (s 218(4)(c)); and (4) in any other case, the strategic health authority or special health authority exercising functions of the Secretary of State in respect of the hospital, or the special health authority or local health board exercising functions of the Welsh Ministers in respect of the hospital (s 218(4)(d)). As to the meaning of 'special trustees' see PARA 66 note 1. 'Special trustees' includes special trustees within the meaning of the National Health Service (Wales) Act 2006 s 160; National Health Service Act 2006 s 218(6). As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to primary care trusts see PARA 111 et seq. As to strategic health authorities see PARA 94 et seq. As to special health authorities see PARA 136. As to the meaning of 'local health board' see PARA 17 note 13. As to the Secretary of State see PARA 6 note 8. As to the delegation of the functions of the Secretary of State see PARA 7. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to additional provision relating to trusts see PARA 71. The right of the trustees of a will to receive settled property from the trustees of the settlement, being enforceable by action to execute the settlement trusts, is property within the meaning of s 218: see *Re Gartside, Coote and Eyre-Kaye v Lees* [1949] 2 All ER 546.

4 National Health Service Act 2006 s 218(3). As to gifts to nationalised hospitals and the effect of nationalisation on bequests see generally **CHARITIES** vol 8 (2010) PARAS 152, 153, 225. See also *Thomson's Trustees v Leith Hospital* 1951 SC 533, Ct of Sess; *Re Mills, Midland Bank Executor and Trustee Co Ltd v United Birmingham Hospitals Board of Governors* [1953] 1 All ER 835, [1953] 1 WLR 554, where, in both cases, there was a bequest to a voluntary hospital prior to nationalisation. As to the transfer of voluntary hospitals to the Minister of Health on the formation of the National Health Service see PARA 4.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(2) ADMINISTRATION/(i) England/G. TRUSTS/73. Trust property previously held for general hospital purposes.

### **73. Trust property previously held for general hospital purposes.**

The person<sup>1</sup> holding certain transferred hospital property<sup>2</sup> after the transfer or last transfer must secure, so far as is reasonably practicable, that the objects of any original endowment<sup>3</sup>, and the observance of any conditions attached to that endowment, including in particular conditions intended to preserve the memory of any person or class of persons, are not<sup>4</sup> prejudiced<sup>5</sup>. Subject to this provision<sup>6</sup>, the property must be held on trust for such purposes relating to hospital services (including research), or to any other part of the health service<sup>7</sup> associated with any hospital<sup>8</sup>, as the person holding the property considers appropriate<sup>9</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 The National Health Service Act 2006 s 220 applies to property transferred under the National Health Service Reorganisation Act 1973 s 23 (repealed) (winding-up of hospital endowment funds), or transferred under s 24 (repealed) (transfer of trust property from abolished authorities) and which immediately before 1 April 1974 (being the day appointed for the purposes of s 24) was, in accordance with any provision contained in or made under the National Health Service Act 1946 s 7 (repealed), applicable for purposes relating to hospital services or relating to some form of research, including any such property which has been further transferred under the National Health Service Act 1977 s 92 (repealed): National Health Service Act 2006 s 220(1). Section 220 continues to apply to any such property after any further transfer under s 213 (see PARA 67) or s 214 (see PARA 68): s 220(2).

3 'Original endowment' means a hospital endowment which was transferred under the National Health Service Act 1946 s 7 (repealed) (see PARA 4) and from which the property in question is derived: National Health Service Act 2006 s 220(4).

4 Ie by the National Health Service Act 2006 Pt 11 (ss 211-236).

5 National Health Service Act 2006 s 220(3). As to additional provision relating to trusts see PARA 71. As to the equivalent provision to the National Health Service Act 2006 s 220 in relation to Wales see the National Health Service (Wales) Act 2006 s 167.

6 Ie subject to the National Health Service Act 2006 s 220(3): see the text to notes 1-5.

7 As to the meaning of 'health service' see PARA 10 note 3.

8 As to the meaning of 'hospital' see PARA 12 note 4.

9 National Health Service Act 2006 s 220(5). Where the person holding the property is a body of special trustees, the power conferred by s 220(5) must be exercised as respects the hospitals for which they are appointed: s 220(6). As to the meaning of 'special trustees' see PARA 66 note 1.

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## **(ii) Wales**

### **74. The National Health Service in Wales.**

Under the National Health Service (Wales) Act 2006, the Welsh Ministers<sup>1</sup> have a duty to continue the promotion of a comprehensive health service in Wales<sup>2</sup>, the services under which must be free of charge except in so far as the making and recovery of charges is expressly provided for<sup>3</sup>. For this purpose they are under a duty to provide certain services similar to those which the Secretary of State<sup>4</sup> is obliged to provide in England<sup>5</sup>, and they have similar general powers<sup>6</sup>. The Welsh Ministers may arrange with any person<sup>7</sup> or body, including voluntary organisations, to provide, or assist in providing, any service under the Act<sup>8</sup>.

The structure of the health service in Wales differs from that in England in that it consists of local health boards<sup>9</sup>, NHS trusts<sup>10</sup>, and special health authorities<sup>11</sup>. It is the duty of local health boards to provide primary medical services<sup>12</sup>, primary dental services<sup>13</sup>, general ophthalmic services<sup>14</sup>, and make arrangements for pharmaceutical services<sup>15</sup>.

Public involvement in and scrutiny of the health service in Wales is provided for by way of community health councils, which must represent the interests in the health service of the public in their districts<sup>16</sup>, and local health boards which must make arrangements to involve and consult persons to whom health services are, or may be, provided in connection with the planning and provision of those services<sup>17</sup>. Provision may also be made for scrutiny of health services by local authorities<sup>18</sup>.

1 As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the territorial limit on the exercise of the functions of the Welsh ministers see PARA 6.

2 As to the meaning of 'Wales' see PARA 6 note 2.

3 See the National Health Service (Wales) Act 2006 s 1. The structure of the National Health Service (Wales) Act 2006 is largely similar to that of the National Health Service Act 2006. The provisions of the National Health Service (Wales) Act 2006 are not set out in detail in this work but where the provisions of the National Health Service Act 2006 are covered reference is made in the footnotes to the equivalent provision under the National Health Service (Wales) Act 2006.

4 As to the Secretary of State see PARA 6 note 8.

5 See the National Health Service (Wales) Act 2006 ss 3-5, Sch 1. As to the duty of the Secretary of State to provide certain services see PARAS 12, 33-38. As to the meaning of 'England' see PARA 6 note 2.

6 See the National Health Service (Wales) Act 2006 s 2.

7 As to the meaning of 'person' see PARA 17 note 2.

8 See the National Health Service (Wales) Act 2006 s 10(1), (2).

9 See the National Health Service (Wales) Act 2006 ss 11-17.

10 See the National Health Service (Wales) Act 2006 ss 18-21.

11 See the National Health Service (Wales) Act 2006 ss 22-25.

12 See the National Health Service (Wales) Act 2006 s 41(1).

- 13 See the National Health Service (Wales) Act 2006 s 56(1).
- 14 See the National Health Service (Wales) Act 2006 s 71(1); and PARA 338.
- 15 See the National Health Service (Wales) Act 2006 s 80.
- 16 See the National Health Service (Wales) Act 2006 s 182, Sch 10; and PARA 534.
- 17 See the National Health Service (Wales) Act 2006 s 183(1); and PARA 534.
- 18 See the National Health Service (Wales) Act 2006 ss 184-186.

## **UPDATE**

### **74 The National Health Service in Wales**

NOTE 9--In exercise of the powers conferred on them by the National Health Service (Wales) Act 2006 ss 11-13 the Welsh Ministers have made the Local Health Boards (Directed Functions) (Wales) Regulations 2009, SI 2009/1511, and the Welsh Health Specialised Services Committee (Wales) Regulations 2009, SI 2009/3097.

NOTE 16--National Health Service (Wales) Act 2006 Sch 10 amended: Health Act 2009 Sch 3 para 16.

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### **(3) HEALTH SERVICE BODIES**

#### **(i) In general**

#### **A. INTRODUCTION**

#### **75. Health service bodies in England and Wales.**

The structure of the National Health Service differs between England and Wales<sup>1</sup>. In England, health service bodies comprise strategic health authorities<sup>2</sup>, primary care trusts<sup>3</sup>, and special health authorities<sup>4</sup>. In addition the Secretary of State<sup>5</sup> has powers to establish NHS trusts<sup>6</sup> and such trusts may apply to an independent regulator for authorisation to become NHS foundation trusts<sup>7</sup>. The Secretary of State may delegate any of his functions relating to the National Health Service to a strategic health authority, a primary care trust or a special health authority<sup>8</sup>.

In Wales, health service bodies comprise local health boards<sup>9</sup>, NHS trusts<sup>10</sup>, and special health authorities<sup>11</sup>. There is no provision in relation to Wales for strategic health authorities, primary care trusts or NHS foundation trusts. The Welsh Ministers<sup>12</sup> have power to arrange with any person<sup>13</sup> or body to provide, or assist in providing, any service under the National Health Service (Wales) Act 2006<sup>14</sup>. A body corporate known as the Wales Centre for Health or Canolfan Iechyd Cymru is established to develop and maintain arrangements for making information about matters related to the protection and improvement of health in Wales available to the public in Wales; to undertake and commission research into such matters; and to contribute to the provision and development of training in such matters<sup>15</sup>.

1 As to the current legislation in relation to the organisation of the National Health Service and as to the territorial limits on the exercise of functions in respect of the service in England and Wales see PARA 6. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to strategic health authorities see PARA 94 et seq.

3 As to primary care trusts see PARA 111 et seq.

4 As to special health authorities see PARA 136 et seq.

5 As to the Secretary of State see PARA 6 note 8.

6 As to NHS trusts see PARA 155 et seq.

7 As to NHS foundation trusts see PARA 174.

8 See the National Health Service Act 2006 s 7; and PARA 7.

9 See the National Health Service (Wales) Act 2006 ss 11-17, Sch 2.

10 See the National Health Service (Wales) Act 2006 ss 18-21.

11 See the National Health Service (Wales) Act 2006 ss 22-25.

12 As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

13 As to the meaning of 'person' see PARA 17 note 2.

- 14 See the National Health Service Act 2006 s 10. As to the National Health Service in Wales see PARA 74.
- 15 See PARA 595.

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## ***B. PROVISIONS OF COMMON APPLICATION***

### **(A) DUTY TO CO-OPERATE**

#### **76. Co-operation.**

It is the duty of NHS bodies<sup>1</sup> to co-operate with each other in exercising their functions<sup>2</sup>.

<sup>1</sup> As to the meaning of 'NHS body' see PARA 8 note 2.

<sup>2</sup> National Health Service Act 2006 s 72. As to the meaning of 'functions' see PARA 6 note 3. As to the duty of co-operation between NHS bodies and local authorities see s 82; and PARA 231.

#### **UPDATE**

#### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.



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## 77. Joint working with the prison service.

In exercising their respective functions<sup>1</sup>, NHS bodies<sup>2</sup> (on the one hand) and the prison service<sup>3</sup> (on the other) must co-operate with one another with a view to improving the way in which those functions are exercised in relation to securing and maintaining the health of prisoners<sup>4</sup>.

The Secretary of State<sup>5</sup> may by regulations<sup>6</sup> make provision for or in connection with enabling prescribed<sup>7</sup> NHS bodies (on the one hand) and the prison service (on the other) to enter into prescribed arrangements in relation to the exercise of prescribed functions of the NHS bodies<sup>8</sup> and prescribed health-related functions of the prison service<sup>9</sup>, if the arrangements are likely to lead to an improvement in the way in which those functions are exercised in relation to securing and maintaining the health of prisoners<sup>10</sup>. The arrangements which may be prescribed include arrangements:

- 35 (1) for or in connection with the establishment and maintenance of a fund which is made up of contributions by one or more NHS bodies and by the prison service<sup>11</sup>, and out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the prison service<sup>12</sup>;
- 36 (2) for or in connection with the exercise by an NHS body on behalf of the prison service of prescribed health-related functions of the prison service in conjunction with the exercise by the NHS body of prescribed functions of the NHS body<sup>13</sup>;
- 37 (3) for or in connection with the exercise by the prison service on behalf of an NHS body of prescribed functions of the NHS body in conjunction with the exercise by the prison service of prescribed health-related functions of the prison service<sup>14</sup>;
- 38 (4) as to the provision of staff, goods<sup>15</sup> or services in connection with any arrangements mentioned in head (1), (2) or (3) above<sup>16</sup>;
- 39 (5) as to the making of payments by the prison service to an NHS body in connection with any arrangements mentioned in head (2) above<sup>17</sup>;
- 40 (6) as to the making of payments by an NHS body to the prison service in connection with any arrangements mentioned in head (3) above<sup>18</sup>.

Any such arrangements do not affect the liability of NHS bodies, or of the prison service, for the exercise of any of their functions<sup>19</sup>.

1 As to the meaning of 'functions' see PARA 6 note 3.

2 As to the meaning of 'NHS body' see PARA 8 note 2.

3 'Prison service' means the Minister of the Crown exercising functions in relation to prisons: National Health Service Act 2006 s 249(5). 'Prison' does not include a naval, military or air force prison: Prison Act 1952 s 53(1); definition applied by the National Health Service Act 2006 s 249(5). 'Minister of the Crown' means the holder of an office in Her Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council: Ministers of the Crown Act 1975 s 8(1); definition applied by the National Health Service Act 2006 s 249(5). As to ministerial responsibility for prisons see **PRISONS** vol 36(2) (Reissue) PARA 505. As to the meaning of 'United Kingdom' see PARA 15 note 8. As to Her Majesty's Government see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517. As to the Board of Trade see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 505; **TRADE AND INDUSTRY** vol 97 (2010) PARA 802. As to the Defence Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 443-447.

4 National Health Service Act 2006 s 249(1). As to the equivalent provision to the National Health Service Act 2006 s 249 in relation to Wales see the National Health Service (Wales) Act 2006 s 188.

5 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

6 As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

7 'Prescribed' means prescribed by regulations: see the National Health Service Act 2006 s 275(1).

8 National Health Service Act 2006 s 249(2)(a).

9 National Health Service Act 2006 s 249(2)(b).

10 National Health Service Act 2006 s 249(2).

11 National Health Service Act 2006 s 249(3)(a)(i).

12 National Health Service Act 2006 s 249(3)(a)(ii). As to financial provision in respect of NHS bodies see PARA 503 et seq.

13 National Health Service Act 2006 s 249(3)(b).

14 National Health Service Act 2006 s 249(3)(c).

15 As to the meaning of 'goods' see PARA 12 note 7.

16 National Health Service Act 2006 s 249(3)(d).

17 National Health Service Act 2006 s 249(3)(e).

18 National Health Service Act 2006 s 249(3)(f).

19 National Health Service Act 2006 s 249(4). As to liability and redress schemes for NHS bodies see PARA 656 et seq.

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

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## (B) POWER TO RAISE MONEY

### 78. Power to raise money.

An NHS body<sup>1</sup> has power to engage in activities intended to stimulate the giving (whether on trust<sup>2</sup> or otherwise) of money or other property to assist the body in providing or improving any services or any facilities<sup>3</sup> or accommodation which is or are, or will be, provided as part of the health service<sup>4</sup>, or assist it in connection with its functions<sup>5</sup> with respect to research<sup>6</sup>. Subject to any directions of the Secretary of State<sup>7</sup> excluding specified descriptions of activity, such activities include public appeals or collections<sup>8</sup>, competitions<sup>9</sup>, entertainments<sup>10</sup>, bazaars<sup>11</sup>, sales of produce or other goods<sup>12</sup>, and other similar activities<sup>13</sup>. The activities may involve the use of land<sup>14</sup>, premises or other property held by or for the benefit of the body exercising the power<sup>15</sup>.

The body at whose instance property is given must, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for or for the purpose for which it was given<sup>16</sup>. Where property held by a body is more than sufficient to enable the purpose for which it was given to be fulfilled, the excess is applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the body as it considers appropriate<sup>17</sup>. Where property held by a body is insufficient to enable the purpose for which it was given to be fulfilled the body may apply so much of the capital or income at its disposal as is needed to enable the purpose to be fulfilled<sup>18</sup>.

1    le any NHS body other than a local health board: see the National Health Service Act 2006 s 222(1). As to the meaning of 'NHS body' see PARA 8 note 2. As to the meaning of 'local health board' see PARA 17 note 13.

2    As to trusts and property under the National Health Service Act 2006 s 222 see s 215; and PARA 69. As to the meaning of 'property' see PARA 4 note 9.

3    As to the meaning of 'facilities' see PARA 12 note 7.

4    National Health Service Act 2006 s 222(2)(a). As to the meaning of 'health service' see PARA 10 note 3. As to the equivalent provision to the National Health Service Act 2006 s 222 in relation to Wales see the National Health Service (Wales) Act 2006 s 169.

5    As to the meaning of 'functions' see PARA 6 note 3.

6    National Health Service Act 2006 s 222(2)(b). As to research see PARAS 22, 38 and 89 et seq.

7    As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to directions generally see PARA 9.

8    National Health Service Act 2006 s 222(3)(a).

9    National Health Service Act 2006 s 222(3)(b).

10   National Health Service Act 2006 s 222(3)(c).

11   National Health Service Act 2006 s 222(3)(d).

12   National Health Service Act 2006 s 222(3)(e). As to the meaning of 'goods' see PARA 12 note 7.

13   National Health Service Act 2006 s 222(3)(f).

14 As to the meaning of 'land' see PARA 24 note 2.

15 National Health Service Act 2006 s 222(4). Section 222(4) is subject to any restrictions on the purposes for which trust property may be used: s 222(5). References to the purposes for which trust property may be used or applied include, in the case of trust property which has been transferred under s 213 (see PARA 67) or s 214 (see PARA 68), references to those purposes as enlarged by s 216 (see PARA 70): s 222(12).

16 National Health Service Act 2006 s 222(6). This provision is expressed to be subject to s 222 and s 215 (see PARA 69).

17 National Health Service Act 2006 s 222(7). Where under s 222(7) or (10) (see note 18) property becomes applicable for purposes other than that for which it was given the body applying the property must have regard to the desirability of applying it for a purpose similar to that for which it was given: s 222(11). See also s 222(12); and note 15.

18 National Health Service Act 2006 s 222(8). Section 222(8) is subject in the case of trust property to any restrictions on the purpose for which the trust property may be applied and, in the case of money paid or payable by the Secretary of State under s 224 (see PARA 505) or s 226 (see PARA 507), to any directions he may give: s 222(9). Where the capital or income applicable under s 222(8) is insufficient or is not applied to enable the purpose to be fulfilled, the property held by the body is applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the body as it considers appropriate: s 222(10). See also notes 15, 17.

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

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## (C) INTERVENTION, DEFAULT POWERS AND LIABILITY

### 79. Intervention orders.

If the Secretary of State<sup>1</sup> considers that an NHS body<sup>2</sup>, other than an NHS foundation trust<sup>3</sup>, is not performing one or more of its functions<sup>4</sup> adequately or at all, or that there are significant failings in the way the body is being run<sup>5</sup>, and is satisfied that it is appropriate for him to intervene<sup>6</sup>, he may make an 'intervention order'<sup>7</sup> in respect of the body<sup>8</sup>.

An intervention order may make any of the following provisions, including any combination of such provisions<sup>9</sup>. An intervention order may:

- 41 (1) provide for the removal from office of all the members<sup>10</sup>, or those specified in the order<sup>11</sup>, and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals)<sup>12</sup>;
- 42 (2) provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of all the members<sup>13</sup>, or those specified in the order<sup>14</sup>, and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals)<sup>15</sup>;
- 43 (3) contain directions to the body to which it relates to secure that a function of the body specified in the directions (a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person<sup>16</sup> as is specified in the directions<sup>17</sup>; and (b) is so performed in such a way as to achieve such objectives as are so specified<sup>18</sup>, and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified<sup>19</sup>;
- 44 (4) provide in relation to any provision<sup>20</sup> specified in the order that it does not apply in relation to the body while the order remains in force<sup>21</sup>, or that it applies in relation to the body, while the order remains in force, with modifications specified in the order<sup>22</sup>.

An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order<sup>23</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 ss 66, 67 in relation to Wales see the National Health Service (Wales) Act 2006 ss 26, 27.

2 As to the meaning of 'NHS body' see PARA 8 note 2.

3 As to NHS foundation trusts see PARA 174. As to failing NHS foundation trusts see PARA 209.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 National Health Service Act 2006 s 66(1), 2(a).

6 National Health Service Act 2006 s 66(2)(b).

7 As to the making of orders see PARA 9. The power to make such orders is not exercisable by statutory instrument (see s 272(2), (3)(a): see PARA 9) and they are not recorded in this work.

8 National Health Service Act 2006 s 66(2).

9 National Health Service Act 2006 s 66(3).

10 National Health Service Act 2006 s 67(2)(a). 'Member' means a member of a strategic health authority, primary care trust, special health authority or local health board, or a member of the board of directors of an NHS trust: s 67(1)(a). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111 et seq. As to special health authorities see PARA 136. As to the meaning of 'local health board' see PARA 17 note 13. As to NHS trusts see PARA 155.

11 National Health Service Act 2006 s 67(2)(b).

12 National Health Service Act 2006 s 67(2).

13 National Health Service Act 2006 s 67(3)(a).

14 National Health Service Act 2006 s 67(3)(b).

15 National Health Service Act 2006 s 67(3). The powers and duties referred to in s 67(3) are, in the case of an employee member, only those which he has in his capacity as a member: s 67(4). 'Employee member' means a member of a strategic health authority, primary care trust, special health authority or local health board who is an officer of the body, or an executive director of an NHS trust: s 67(1)(b). As to the meaning of 'officer' see PARA 28 note 5.

16 If such person is an NHS body other than an NHS foundation trust, the functions of that body include the performance of the functions specified in the directions under the National Health Service Act 2006 s 67(5): s 67(6). As to the meaning of 'person' see PARA 17 note 2.

17 National Health Service Act 2006 s 67(5)(a).

18 National Health Service Act 2006 s 67(5)(b).

19 National Health Service Act 2006 s 67(5).

20 National Health Service Act 2006 s 67(8) applies in relation to any provision in the National Health Service Act 2006, or in any order or regulations made, or directions given, under the Act, relating to the membership of the body to which an intervention order relates (or in the case of an NHS trust to the membership of its board of directors) (s 67(7)(a)), or the procedure of the body (s 67(7)(b)).

21 National Health Service Act 2006 s 67(8)(a).

22 National Health Service Act 2006 s 67(8)(b).

23 National Health Service Act 2006 s 67(9).

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

### **79-82 Intervention, default powers and liability**

If the Secretary of State considers it appropriate in the interests of the health service, the Secretary of State may appoint or require the appointment of a trust special administrator to take over the functions of an NHS trust, an NHS foundation trust or a

primary care trust and, following receipt of the administrator's report, must decide what action to take: see the National Health Service Act 2006 Pts 5A, 5B (ss 65A-65Z3) and Sch 8A (added by the Health Act 2009 ss 16, 17, Sch 2); and PARA 79A.

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### **79A. Trust special administrators.**

If the Secretary of State considers it appropriate in the interests of the health service<sup>1</sup>, the Secretary of State may (1) in the case of an NHS trust or an NHS foundation trust<sup>2</sup>, make an order<sup>3</sup> authorising the appointment of a trust special administrator to exercise the functions of the chairman and directors of an NHS trust<sup>4</sup>; and (2) in the case of a primary care trust, give directions to a primary care trust requiring it to appoint a trust special administrator to exercise on its behalf, to the extent, and subject to any conditions, specified in the directions, such provider functions of the primary care trust as are specified in the directions<sup>5</sup>. Before making such an order or giving such directions, the Secretary of State must consult (a) the trust; (b) any strategic health authority in whose area the NHS trust or NHS foundation trust has hospitals, establishments or facilities or, as the case may be, any strategic health authority whose area includes any part of the primary care trust's area; and (c) any other person to which the trust provides goods or services under the National Health Service Act 2006 and which the Secretary of State considers it appropriate to consult<sup>6</sup>. When the appointment of a trust special administrator takes effect, the chairman and executive and non-executive directors of the NHS trust or NHS foundation trust are suspended from office<sup>7</sup> or, as the case may be, the relevant functions the primary care trust<sup>8</sup> cease to be exercisable by any committee, sub-committee or officer of the primary care trust by which they were previously exercisable<sup>9</sup>.

The Independent Regulator of NHS Foundation Trusts ('the regulator') may give the Secretary of State written notice, with a report stating its reasons, if it is satisfied that an NHS foundation trust is failing to comply with a notice it has given requiring the trust to do specified things<sup>10</sup>, and further exercise of its powers in relation to the trust<sup>11</sup> would not be likely to secure the provision of the goods and services which the trust's authorisation requires it to provide<sup>12</sup>. Before giving such a notice, the regulator must consult first the Secretary of State and then the trust, any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and any other person to which the trust provides goods or services under the National Health Service Act 2006 and which the regulator considers it appropriate to consult<sup>13</sup>. If the regulator gives such a notice in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust<sup>14</sup>.

Within the period of 45 working days beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the NHS trust or an NHS foundation trust or, as the case may be, in relation to the relevant functions of the primary care trust<sup>15</sup>. At the same time as publishing a draft report, a trust special administrator must publish a statement setting out the means by which the administrator will seek responses to the draft report<sup>16</sup>. Within the period of 15 working days beginning with the end of the consultation period, the trust special administrator must provide to the Secretary of State a final report stating the action which the administrator recommends that the Secretary of State should take in relation to the NHS trust or an NHS foundation trust or, as the case may be, in relation to the performance of the relevant functions of the primary care trust<sup>17</sup>.

Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report, the Secretary of State must decide what action to take in relation to the



the NHS trust or an NHS foundation trust or, as the case may be, in relation to the performance of the relevant functions of the primary care trust<sup>18</sup>. Further, the Secretary of State must, as soon as reasonably practicable, publish a notice of the decision and of the reasons for it<sup>19</sup>, and lay a copy of the notice before Parliament<sup>20</sup>. In the case of an NHS trust or an NHS foundation trust, if the Secretary of State decides under not to dissolve the trust, the Secretary of State must make an order specifying a date when the appointment of the trust special administrator and the suspension of the chairman and directors of the trust come to an end<sup>21</sup>. In the case of a primary care trust, Secretary of State may at any time give directions to a primary care trust and a trust special administrator who exercises functions on behalf of the primary care trust, requiring that the appointment of the administrator should come to an end with effect from a specified day<sup>22</sup>.

1 National Health Service Act 2006 ss 65B(2), 65P(2) (Pt 5A (ss 65A-65O), and Pt 5B (ss 65P-65Z3) added by the Health Act 2009 ss 16, 17).

2 In particular, the National Health Service Act 2006 Pt 5A applies to (1) an NHS trust all or most of whose hospitals, establishments and facilities are in England; (2) an NHS foundation trust authorised under s 35 (see PARA 195) on an application under s 33 (see PARA 193); (3) an NHS foundation trust established under s 56 (see PARA 212) if (a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS trust within head (1) above or an NHS foundation trust within head (2) above, or (b) the NHS foundation trust is the result of a succession of mergers under s 56, any of which involved an NHS trust within head (1) above or an NHS foundation trust within head (2) above: s 65A.

3 The power to make an order under the National Health Service Act 2006 Pt 5A is exercisable by statutory instrument: s 272(2).

4 National Health Service Act 2006 s 65B(1). An order under s 65B(1) must specify the date when the appointment is to take effect, which must be within the period of five working days beginning with the day on which the order is made: s 65B(3). As to the meaning of 'working day' in Pt 5A, see s 65O.

In relation to the National Health Service Act 2006 Pt 5A, provision is made by s 65M for the replacement of a special trust administrator, and provision is made by s 65N requiring the Secretary of State to publish guidance for special trust administrators.

5 National Health Service Act 2006 s 65P(1), (10). Directions under s 65P(1) must be laid before Parliament after they are given: s 65Z2(a). The directions must specify the date when the appointment is to take effect, which must be within the period of five working days beginning with the day on which the directions are given, and the name of the person to be appointed: s 65P(3). As to the meaning of 'working day' in Pt 5B, see s 65Z3.

In relation to the National Health Service Act 2006 Pt 5B, s 65Y provides for the replacement of a special trust administrator, s 65Z allows the Secretary of State to give directions to a special trust administrator about the exercise of functions and s 65Z1 requires the Secretary of State to publish guidance for special trust administrators. Directions under s 65Z must be laid before Parliament after they are given: s 65Z2(c).

6 National Health Service Act 2006 ss 65B(4), 65P(4). Further and consequential provisions are made by ss 65B(5)-(8), 65P(5)-(9).

7 National Health Service Act 2006 s 65C(1). Section 65C(1) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust: s 65C(2).

8 I.e. those functions exercisable by the trust special administrator: National Health Service Act 2006 s 65Q(3).

9 National Health Service Act 2006 s 65Q(1). Section 65Q(1) does not affect the employment of officer of the primary care trust: s 65Q(2).

10 I.e. a notice under the National Health Service Act 2006 s 52.

11 I.e. its powers under the National Health Service Act 2006 s 52.

12 National Health Service Act 2006 s 65D(1)-(3).

13 National Health Service Act 2006 s 65D(4). See further s 65B(5)-(8).

14 National Health Service Act 2006 s 65E(1). Such an order must specify the date when it is to take effect, which must be within the period of five working days beginning with the day on which it is made: s 65E(2). Further and consequential provisions are made by s 65E(3)-(8) and Sch 8A (Sch 8A added by the Health Act 2009 Sch 2).

15 See the National Health Service Act 2006 ss 65F(1), (2), 65R(1), (2). After receiving the draft report, the Secretary of State must lay it before Parliament: ss 65F(3), 65R(3). As to the Secretary of State's power to extend time, see ss 65J, 65V.

16 National Health Service Act 2006 ss 65G(1), 65S(1). The statement must specify a period of 30 working days within which the administrator seeks responses, and the first day of this consultation period must be within the period of five working days beginning with the day on which the draft report is published: ss 65G(2), (3), 65S(2), (3). As to the Secretary of State's power to extend time, see s 65J, 65V, and as to the duties which apply during the consultation period, see ss 65H, 65T.

17 See the National Health Service Act 2006 ss 65I(1), (2), 65U(1), (2). After receiving the final report, the Secretary of State must lay it before Parliament: ss 65I(3), 65U(3). As to the Secretary of State's power to extend time, see ss 65J, 65V.

18 National Health Service Act 2006 ss 65K(1), 65W(1).

19 National Health Service Act 2006 ss 65K(2), 65W(2)(a).

20 National Health Service Act 2006 ss 65K(3), 65W(2)(b).

21 National Health Service Act 2006 s 65L(1), (2). As to the Secretary of State's powers where a former NHS foundation trust which has become an NHS trust by virtue of an order made under s 65E(1), see s 65L(3)-(5).

22 National Health Service Act 2006 s 65X. Directions under s 65X must be laid before Parliament after they are given: s 65Z2(b).

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

### **79-82 Intervention, default powers and liability**

If the Secretary of State considers it appropriate in the interests of the health service, the Secretary of State may appoint or require the appointment of a trust special administrator to take over the functions of an NHS trust, an NHS foundation trust or a primary care trust and, following receipt of the administrator's report, must decide what action to take: see the National Health Service Act 2006 Pts 5A, 5B (ss 65A-65Z3) and Sch 8A (added by the Health Act 2009 ss 16, 17, Sch 2); and PARA 79A.

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## **80. Secretary of State's default powers.**

If the Secretary of State<sup>1</sup> considers that an NHS body<sup>2</sup>, other than NHS foundation trust<sup>3</sup>, has failed to carry out any functions<sup>4</sup> conferred or imposed on it by or under the National Health Service Act 2006<sup>5</sup>, or has in carrying out those functions failed to comply with any regulations<sup>6</sup> or directions<sup>7</sup> relating to those functions<sup>8</sup>, he may after such inquiry as he considers appropriate make an order declaring it to be in default<sup>9</sup>. The members of the body in default must immediately vacate their office, and the order must provide for the appointment<sup>10</sup> of new members of the body<sup>11</sup>, and may contain such provisions as seem to the Secretary of State expedient for authorising any person<sup>12</sup> to act in the place of the body pending the appointment of new members<sup>13</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 68 in relation to Wales see the National Health Service (Wales) Act 2006 s 28.

2 As to the meaning of 'NHS body' see PARA 8 note 2.

3 As to NHS foundation trusts see PARA 174. As to failing NHS foundation trusts see PARA 209.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 National Health Service Act 2006 s 68(1), (2)(a).

6 As to the meaning of 'regulations' see PARA 7 note 2.

7 As to the power of the Secretary of State to give directions see PARA 16.

8 National Health Service Act 2006 s 68(2)(b).

9 National Health Service Act 2006 s 68(2). Such an order may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient, including: (1) provision for the transfer to the Secretary of State of property and liabilities of the body in default (s 68(4)(a)); and (2) where any such order is varied or revoked by a subsequent order, provision in the subsequent order for the transfer to the body in default of any property or liabilities acquired or incurred by the Secretary of State in discharging any of the functions transferred to him (s 68(4)(b)). As to the meaning of 'property' see PARA 4 note 9. As to the making of orders generally see PARA 9. Orders made under this provision are treated as local and are not recorded in this work.

10 In accordance with the provisions of the National Health Service Act 2006.

11 National Health Service Act 2006 s 68(3)(a).

12 As to the meaning of 'person' see PARA 17 note 2.

13 National Health Service Act 2006 s 68(3)(b).

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

**79-82 Intervention, default powers and liability**

If the Secretary of State considers it appropriate in the interests of the health service, the Secretary of State may appoint or require the appointment of a trust special administrator to take over the functions of an NHS trust, an NHS foundation trust or a primary care trust and, following receipt of the administrator's report, must decide what action to take: see the National Health Service Act 2006 Pts 5A, 5B (ss 65A-65Z3) and Sch 8A (added by the Health Act 2009 ss 16, 17, Sch 2); and PARA 79A.

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## **81. Transfer of residual liabilities.**

If a strategic health authority<sup>1</sup>, a primary care trust<sup>2</sup>, an NHS trust<sup>3</sup> or a special health authority<sup>4</sup> ceases to exist, the Secretary of State<sup>5</sup> must exercise his functions<sup>6</sup> so as to secure that all of the body's liabilities (other than any criminal liabilities) are dealt with<sup>7</sup>. A liability is dealt with by being transferred to an NHS body<sup>8</sup>, the Secretary of State or the Welsh Ministers<sup>9</sup>.

1 As to strategic health authorities see PARA 94 et seq.

2 As to primary care trusts see PARA 111 et seq.

3 As to NHS trusts see PARA 155.

4 As to special health authorities see PARA 136.

5 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 70 in relation to Wales see the National Health Service (Wales) Act 2006 s 29.

6 As to the meaning of 'functions' see PARA 6 note 3.

7 National Health Service Act 2006 s 70(1).

8 As to the meaning of 'NHS body' see PARA 8 note 2.

9 National Health Service Act 2006 s 70(2). As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

### **79-82 Intervention, default powers and liability**

If the Secretary of State considers it appropriate in the interests of the health service, the Secretary of State may appoint or require the appointment of a trust special administrator to take over the functions of an NHS trust, an NHS foundation trust or a primary care trust and, following receipt of the administrator's report, must decide what action to take: see the National Health Service Act 2006 Pts 5A, 5B (ss 65A-65Z3) and Sch 8A (added by the Health Act 2009 ss 16, 17, Sch 2); and PARA 79A.

## **81 Transfer of residual liabilities**

NOTES--As to the transfer of the residual estate from the Welsh Ministers to specified National Health Service bodies, see the National Health Service (Transfer of Residual Estate) (Wales) Order 2009, SI 2009/2617.



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## **82. Protection from personal liability.**

Every member and officer of an NHS body<sup>1</sup> is protected against any action, liability, claim or demand made on him personally in respect of any matter or thing done, or contract entered into, if the matter or thing was done, or the contract was entered into, in good faith for the purpose of carrying out his functions under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006<sup>2</sup>. Any expense incurred by such a member or officer in so acting must be borne and repaid by the body concerned<sup>3</sup>. Such protection may not, however, prevent an action for damages for negligence being pursued successfully against the body<sup>4</sup>. In regard to hospitals, the general principle is that the body responsible for the hospital must use reasonable skill in carrying on the hospital and is liable for the acts and omissions of its staff in the course of their employment<sup>5</sup>.

1 As to the meaning of 'NHS body' see PARA 8 note 2.

2 Public Health Act 1875 s 265; National Health Service Act 2006 s 69(1), (2). As to the liability in tort of medical practitioners see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 196-204.

3 Public Health Act 1875 s 265 (amended by the Environment Act 1995 s 63, Sch 7 para 15(d)); National Health Service Act 2006 s 69(1), (2).

4 *Bullard v Croydon Hospital Group Management Committee* [1953] 1 QB 511, [1953] 1 All ER 596.

5 See **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 205.

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

### **79-82 Intervention, default powers and liability**

If the Secretary of State considers it appropriate in the interests of the health service, the Secretary of State may appoint or require the appointment of a trust special administrator to take over the functions of an NHS trust, an NHS foundation trust or a primary care trust and, following receipt of the administrator's report, must decide what action to take: see the National Health Service Act 2006 Pts 5A, 5B (ss 65A-65Z3) and Sch 8A (added by the Health Act 2009 ss 16, 17, Sch 2); and PARA 79A.

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## (D) INFORMATION

### 83. Duty to report on matters relating to AIDS and HIV.

Periodical reports<sup>1</sup> containing specified information as to AIDS<sup>2</sup> and HIV<sup>3</sup> must be made to the Secretary of State by each strategic health authority in England<sup>4</sup>, each NHS trust<sup>5</sup>, each NHS foundation trust<sup>6</sup>, and each primary care trust<sup>7</sup>. The reports must contain the specified information<sup>8</sup> and such other relevant information<sup>9</sup> as the Secretary of State may direct<sup>10</sup>. The Secretary of State may by order made by statutory instrument make provision for requiring any specified special health authority<sup>11</sup> to make reports to him on matters relating to AIDS and HIV, and may for those purposes modify the required contents of the report<sup>12</sup>.

Each local health board<sup>13</sup> and NHS trust in Wales<sup>14</sup> must make similar reports to the Welsh Ministers<sup>15</sup> who have the same powers in relation to such bodies, and special health authorities in Wales, as those of the Secretary of State set out above<sup>16</sup>.

Any report under these provisions must be published by the authority, trust or board by which it is made<sup>17</sup>.

1 Reports must be in such form and made at such times or intervals and relate to such periods, of not more than 12 months, as the Secretary of State may direct: AIDS (Control) Act 1987 s 1(4). Directions may make different provision for different cases: see s 1(8). As to the meaning of 'month' see PARA 28 note 16. As to the Secretary of State see PARA 6 note 8.

2 'AIDS' means Acquired Immune Deficiency Syndrome: AIDS (Control) Act 1987 s 4(2).

3 'HIV' means Human Immunodeficiency Virus: AIDS (Control) Act 1987 s 4(2).

4 AIDS (Control) Act 1987 s 1(1)(b)(zi) (added by SI 2002/2469). 'Strategic health authority' means a strategic health authority established under the National Health Service Act 2006 s 13 (see PARA 94): AIDS (Control) Act 1987 s 1(9) (amended by SI 2002/2469). As to the meaning of 'England' see PARA 6 note 2.

5 AIDS (Control) Act 1987 s 1(1)(b)(iv) (added by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 32(1)). 'NHS trust' means a National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18 (see PARA 155): AIDS (Control) Act 1987 s 1(10) (added by the National Health Service and Community Care Act 1990 Sch 9 para 32(1); and amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 96, 98). See also the text to note 14.

6 AIDS (Control) Act 1987 s 1(1)(b)(iva) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 69, 70(a)). As to NHS foundation trusts see PARA 174.

7 AIDS (Control) Act 1987 s 1(1)(v) (added by SI 2000/90). As to primary care trusts see PARA 111 et seq.

8 ie information as to:

6 (1) the number of persons known to have AIDS at the end of the reporting period (ie the period to which the report relates), having been so diagnosed by facilities or services provided by the authority, trust or board (see the AIDS (Control) Act 1987 Schedule para 1 (Schedule paras 1, 2, 2A, 4, 5, 6, 7 amended by the National Health Service and Community Care Act 1990 Sch 9 para 32(2); SI 2000/90);

7 (2) the number of such persons who have died (AIDS (Control) Act 1987 Schedule para 2 (as so amended));



- 8 (3) the number of positive results known to have been obtained in the reporting period from blood samples taken for the purposes of HIV antibody tests by facilities or services provided by the authority, trust or board (Schedule para 2A (added by SI 1988/1047; and as so amended));
- 9 (4) particulars of facilities and services provided by the authority, trust or board, or known to it to have been provided in its area by others, for testing for, and preventing the spread of, AIDS and HIV and for treating, counselling and caring for persons with AIDS or infected with HIV (AIDS (Control) Act 1987 Schedule para 4 (as so amended; and further amended by the Health Authorities Act 1995 Sch 1 para 113(3)));
- 10 (5) the number of persons employed in the provision of such facilities and services (AIDS (Control) Act 1987 Schedule para 5 (as so amended));
- 11 (6) an estimate of the provision of such facilities and services in the 12 months following the reporting period (Schedule para 6); and
- 12 (7) particulars of action taken in the area by the authority, trust, board or others in the reporting period to educate the public in relation to AIDS and HIV, to provide training for testing, and for the treatment, counselling and care of persons with AIDS or infected with HIV (Schedule para 7 (as so amended; and further amended by the Health Authorities Act 1995 Sch 1 para 113(3))).

Where the number to be reported under heads (1) to (3) above is between one and nine inclusive, the report must state merely that it is less than ten: AIDS (Control) Act 1987 Schedule para 3.

9 'Relevant information' means information relating to or to any matter connected with AIDS or HIV: AIDS (Control) Act 1987 s 1(9).

10 AIDS (Control) Act 1987 s 1(2)(a) (s 1(2) substituted by the Health Authorities Act 1995 Sch 1 para 113(2)(b)). See also note 1.

11 'Special health authority' means a special health authority established under the National Health Service Act 2006 s 28 or the National Health Service (Wales) Act 2006 s 22 (see PARA 136): AIDS (Control) Act 1987 s 1(9) (amended by the Health Authorities Act 1995 Sch 1 para 113(2)(d); the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 96, 97(c)). See also the text to note 16.

12 See the AIDS (Control) Act 1987 s 1(5), (6) (s 1(5) amended by the Health Authorities Act 1995 Sch 1 para 113(2)(c)). Such an order is subject to annulment in pursuance of a resolution of either House of Parliament: AIDS (Control) Act 1987 s 1(7). Orders may make different provision for different cases: see s 1(8). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516. The AIDS (Control) Contents of Reports) (No 2) Order 1988, SI 1988/1047, has been made.

13 See the AIDS (Control) Act 1987 s 1(b)(i) (substituted by the Health Authorities Act 1995 s 2(1), Sch 1 para 113(2); and amended by SI 2002/2469; SI 2007/961). As to local health boards see PARA 74.

14 See the AIDS (Control) Act 1987 s 1(1)(b)(iv) (as added: see note 5). As to the meaning of 'Wales' see PARA 6 note 2.

15 As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

16 The functions of the Secretary of State under the AIDS (Control) Act 1987 so far as exercisable in relation to Wales were transferred to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1) and are now vested in the Welsh Ministers (see the Government of Wales Act 2006 s 162(1), Sch 11 para 30).

17 AIDS (Control) Act 1987 s 1(2)(b) (as substituted (see note 11); and amended by SI 2000/90; SI 2002/2469; the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 paras 69, 70(b); SI 2007/961).

## UPDATE

### 76-88 Provisions of common application

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.



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#### **84. Information relating to sexually transmitted diseases.**

Every strategic health authority<sup>1</sup>, NHS trust<sup>2</sup>, NHS foundation trust<sup>3</sup>, primary care trust<sup>4</sup>, and local health board<sup>5</sup>, must take all necessary steps to secure that any information capable of identifying an individual obtained by officers<sup>6</sup> of the authority, trust or board with respect to persons examined or treated for any sexually transmitted disease is not disclosed except<sup>7</sup>: (1) for the purpose of communicating that information to a medical practitioner<sup>8</sup>, or to a person employed under his direction in connection with the treatment of persons so suffering, or the prevention of the spread of such disease<sup>9</sup>; and (2) for the purpose of such treatment or prevention<sup>10</sup>.

1 As to strategic health authorities see PARA 94 et seq.

2 As to NHS trusts see PARA 155.

3 As to NHS foundation trusts see PARA 174.

4 As to primary care trusts see PARA 111 et seq.

5 As to local health boards see PARA 74. This provision originally referred to 'every regional health authority and every district health authority'. These references were revoked in relation to England by SI 2002/2469, but in relation to Wales are to be construed as a reference to a health authority: see the Health Authorities Act 1995 (Amendment of Transitional Provisions and Modification of References) Order 1996, SI 1996/971, art 3(2)(a), (c). References to health authorities are now to be construed as references to local health boards: see PARA 449 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 As to the meaning of 'officer' see PARA 28 note 5.

7 National Health Service (Venereal Diseases) Regulations 1974, SI 1974/29, reg 2 (amended by SI 2002/2469; SI 2004/696). As to the law relating to confidence in relation to medical information generally see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 439 et seq.

8 'Medical practitioner' means a registered medical practitioner: National Health Service Act 2006 s 275(1). As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

9 National Health Service (Venereal Diseases) Regulations 1974, SI 1974/29, reg 2(a).

10 National Health Service (Venereal Diseases) Regulations 1974, SI 1974/29, reg 2(b).

#### **UPDATE**

#### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

#### **84 Information relating to sexually transmitted diseases**

NOTES 5, 7--A corresponding amendment has been made to SI 1974/29 reg 2 in relation to Wales: SI 2009/1824.



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## (E) ASSISTANCE

### 85. Financial assistance to voluntary organisations.

The Secretary of State<sup>1</sup> may assist certain voluntary organisations<sup>2</sup> by way of grant or loan, or partly by grant and partly by loan, upon such terms and conditions as he may, with Treasury<sup>3</sup> approval, determine<sup>4</sup>.

The voluntary organisations to whom such assistance may be given are those whose activities consist in or include the provision of a service similar to a relevant service<sup>5</sup>, the promotion of the provision of a relevant or similar service, publicising a relevant or similar service, or giving advice with respect to the manner in which a relevant or similar service can best be provided<sup>6</sup>.

1 As to the Secretary of State see PARA 6 note 8. The functions of the Secretary of State under the Health Services and Public Health Act 1968 so far as exercisable in relation to Wales were transferred to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1) and are now vested in the Welsh Ministers (see the Government of Wales Act 2006 s 162(1), Sch 11 para 30). As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

2 'Voluntary organisation' means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority: Health Services and Public Health Act 1968 s 64(3)(c).

3 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 Health Services and Public Health Act 1968 s 64(1). Any expenses incurred by the Secretary of State in the exercise of this power, and any increase attributable to these provisions in the sums payable out of moneys so provided under any other Act, must be defrayed out of moneys provided by Parliament: see s 77(1). All sums received, by virtue of this provision, by the Secretary of State must be paid into the Exchequer: s 77(2). As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804. As to the Exchequer see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711. As to the delegation of the functions under s 64(1) to strategic health authorities and primary care trusts see PARA 89.

5 'Relevant service' means a service which must or may, by virtue of the relevant enactments, be provided or the provision of which must or may, by virtue of those enactments, be secured by the Secretary of State or the council of a non-metropolitan county, county borough, metropolitan district or London borough or the Common Council of the City of London or a service for the provision of which a primary care trust or local health board is, by virtue of the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133) (pharmaceutical services: see PARA 339 et seq) or the National Health Service (Wales) Act 2006 Pt 6 (ss 71-79) (ophthalmic services: see PARA 338) or Pt 7 Ch 1 (ss 80-91) (pharmaceutical services), under a duty to make arrangements or any service which a primary care trust or local health board is under a duty to provide under the National Health Service Act s 16CA or 16CC (both repealed): Health Services and Public Health Act 1968 s 64(3)(b) (amended by the National Health Service Reorganisation Act 1973 s 57, Sch 4 para 125; the Local Government (Wales) Act 1994 s 22(4), Sch 10 para 5(2); the Health Authorities Act 1995 s 2(1), Sch 1 para 95(3); the National Health Service Reform and Health Care Professions Act 2002 s 2(5), Sch 2 Pt 2 para 40(1), (3); the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 paras 2, 5; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 33, 39(b); SI 2007/961). As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.

'Relevant enactments' means: the Children and Young Persons Act 1933 Pt III (ss 31-76), Pt IV (ss 77-91) (see **CHILDREN AND YOUNG PERSONS**); the National Assistance Act 1948 Pt III (ss 21-36) (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1029 et seq); the Mental Health Act 1959 s 10 so far as it relates to cases mentioned in s 10(a) (repealed) (see now the Mental Health Act 1983 s 116 and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 430); the Children and Young Persons Act 1963 except Pt II (ss 34-44) and s 56 (see **CHILDREN AND YOUNG PERSONS**); the Health Services and Public Health Act 1968; the Family Law Reform Act 1969 s 7(4) (repealed); the Children and Young Persons Act 1969, the Children Act 1975, and the Adoption and Children Act

2002 (see **CHILDREN AND YOUNG PERSONS**); the National Health Service Act 2006 and the National Health Service (Wales) Act 2006; the Children Act 1989 (see **CHILDREN AND YOUNG PERSONS**); and the Powers of Criminal Courts (Sentencing) Act 2000 ss 63-66, 92, Schs 6, 7 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1340 et seq): Health Services and Public Health Act 1968 s 64(3)(a) (substituted by the Children Act 1975 s 108(1)(a), Sch 3 para 46; amended by the Adoption Act 1976 ss 73(2), (3), 76, Sch 3 para 9, Sch 4; the National Health Service Act 1977 s 129, Sch 15 para 46, Sch 16; the Domestic Proceedings and Magistrates' Courts Act 1978 s 89(2), Sch 2 para 22; the Child Care Act 1980 s 89(2), Sch 5 para 19, Sch 6; the Foster Children Act 1980 s 23(2), Sch 2 Pt I; the Children Act 1989 s 108(5), (7), Sch 13 para 17, Sch 15; the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 32; the Adoption and Children Act 2002 s 139(1), Sch 3 paras 9, 10; the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 33, 39(a)).

6 Health Services and Public Health Act 1968 s 64(2).

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

### **85 Financial assistance to voluntary organisations**

NOTE 5--Health Services and Public Health Act 1968 s 64(3)(a) further amended: Criminal Justice and Immigration Act 2008 Sch 4 para 9.

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## **86. Overseas assistance.**

A strategic health authority<sup>1</sup>, a special health authority<sup>2</sup>, a primary care trust<sup>3</sup>, an NHS trust<sup>4</sup>, an NHS foundation trust<sup>5</sup>, a local health board<sup>6</sup>, and the Health Protection Agency<sup>7</sup>, may enter into and carry out agreements for the purpose of<sup>8</sup>: (1) furthering sustainable development in one or more countries<sup>9</sup> outside the United Kingdom<sup>10</sup>; (2) improving the welfare of the population of one or more such countries<sup>11</sup>; or (3) alleviating the effects of a natural or man-made disaster or other emergency on the population of one or more such countries<sup>12</sup>.

An agreement entered into by a body under these provisions (an 'authorised agreement') must not make provision for the body to provide financial assistance<sup>13</sup>. Before entering into an authorised agreement, the body must obtain the consent of the Secretary of State<sup>14</sup>.

1 As to strategic health authorities see PARA 94 et seq.

2 As to special health authorities see PARA 136 et seq.

3 As to primary care trusts see PARA 111 et seq.

4 I.e. a National Health Service trust established under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006: see PARA 155.

5 As to NHS foundation trusts see PARA 174.

6 As to local health boards see PARA 74.

7 As to the Health Protection Agency see PARA 213 et seq.

8 International Development Act 2002 s 9(1), Sch 1 (amended by SI 2002/2469; the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 121, 122; the Health Protection Agency Act 2004 s 11(1), Sch 3 para 16; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 223, 224; SI 2007/961). An order may be made by the Secretary of State, or in the case of any order relating to a Welsh body, by the Welsh Ministers, to amend the International Development Act 2002 Sch 1 by making additions to or deletions from the statutory bodies for the time being listed there: see s 9(5), (6). The powers under s 9(5), (6) were originally vested in the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the Secretary of State see PARA 6 note 8. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. 'Welsh body' means a statutory body whose functions are exercisable only or mainly in or as regards Wales, and which is not designated by the Secretary of State, by order, as an excluded statutory body for these purposes: International Development Act 2002 s 10(2). Any order under these provisions must be made by statutory instrument which, in the case of an order made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament: see s 18(1), (2). As to the meaning of 'Wales' see PARA 6 note 2. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

9 'Country' includes any territory or region: International Development Act 2002 s 17(1).

10 International Development Act 2002 s 9(1)(a). As to the meaning of 'United Kingdom' see PARA 15 note 8.

11 International Development Act 2002 s 9(1)(b). References to the population of a country include references to any future population of the country and to any part of the population (present or future): s 17(2).

12 International Development Act 2002 s 9(1)(c).

13 International Development Act 2002 s 9(2).

14 International Development Act 2002 s 9(3). In the case of a Welsh body, the Secretary of State may give his consent only with the approval of the Welsh Ministers: see s 9(4)(b); Government of Wales Act 2006 Sch 11 para 32.

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.



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## (F) APPOINTMENTS AND EMPLOYMENT

### 87. Appointment of consultants.

Regulations<sup>1</sup> have been made which provide for the procedure to be followed by a strategic health authority<sup>2</sup>, a primary care trust<sup>3</sup>, an NHS trust<sup>4</sup>, a special health authority<sup>5</sup>, or two or more such bodies of the same kind, in England<sup>6</sup> when appointing medical and dental practitioners<sup>7</sup> to consultant<sup>8</sup> posts in their employment<sup>9</sup>. As respects those appointments to which the regulations apply<sup>10</sup>, provision is made for the advertisement of vacant posts<sup>11</sup>, for the constitution and procedure of advisory appointments committees to select candidates for appointment<sup>12</sup> and for candidates' subsequent appointment by authorities to consultant posts<sup>13</sup>. A person may not take up appointment to any consultant post on the staff of an authority or trust unless he is either a medical practitioner or a dental practitioner<sup>14</sup>, and his name is included in the specialist register kept<sup>15</sup> by the General Medical Council<sup>16</sup>.

Similar provision is made in respect of Wales<sup>17</sup>.

1    The National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701. By virtue of the National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1, these regulations have effect as if made under the National Health Service Act 2006 Sch 2 para 7 (see PARA 103), Sch 4 para 25 (see PARA 164), Sch 6 paras 3, 5 (see PARAS 137, 139).

2    As to strategic health authorities see PARA 94 et seq.

3    As to primary care trusts see PARA 111 et seq.

4    As to NHS trusts see PARA 155 et seq.

5    As to special health authorities see PARA 136 et seq.

6    As to the meaning of 'England' see PARA 6 note 2.

7    As to the meaning of 'medical practitioner' see PARA 84 note 7. 'Dental practitioner' means a person registered in the dentists register under the Dentists Act 1984 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 417); National Health Service Act 2006 s 275(1).

8    'Consultant' in relation to a relevant speciality means: (1) a consultant specialising, or who has recently specialised, in the relevant speciality; or (2) where the relevant speciality has not yet been established, a consultant specialising, or who has recently specialised in a speciality which, in the opinion of the relevant college is closely related to the relevant speciality: National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701, reg 2(1). 'Relevant speciality', in relation to the proposed appointment, means the branch of medicine or dentistry in which the appointment is to be made: reg 2(1). 'Relevant college' in relation to the proposed appointment, means whichever one of the following bodies is in the opinion of the authority or trust concerned, most substantially concerned with the speciality in which the appointment is to be made: the Royal College of Anaesthetists; the Royal College of Ophthalmologists; the Royal College of Physicians of London and its associated faculties of Public Health Medicine and Occupational Medicine; the Royal College of Surgeons of England and its associated Faculty of Dental Surgery and the Intercollegiate Faculty of Accident and Emergency Medicine; the Royal College of Obstetricians and Gynaecologists; the Royal College of Paediatrics and Child Health; the Royal College of Pathologists; the Royal College of Psychiatrists; the Royal College of Radiologists: reg 2(1) (definition amended by SI 2004/3365). As to the medical Royal Colleges see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 64.

9    National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701, regs 2(1), 3.

10 The regulations do not apply to appointments which are exempt appointments: see the National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701, regs 3, 5 (amended by SI 2002/2469; SI 2004/696; SI 2004/3365).

11 See the National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701, reg 6 (amended by SI 2004/3365).

12 See the National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701, regs 7, 8, Schs 1, 2 (Sch 1 amended by SI 2002/2469; SI 2004/3365).

13 See the National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701, reg 9.

14 National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701, reg 4(a).

15 In pursuant to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 13(1): see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 45.

16 National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701, reg 4(b) (substituted by SI 2003/1250).

17 See the National Health Service (Appointment of Consultants) (Wales) Regulations 1996, SI 1996/1313 (amended by SI 2003/1250; SI 2005/3039) which, by virtue of the National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1, have effect as if made under the National Health Service (Wales) Act 2006.

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

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## (G) PAYMENTS TO MAKE UP CIVIL REMUNERATION

### 88. Service in the forces: making up civil remuneration.

A person who ceases to be occupied as an officer of a strategic health authority<sup>1</sup>, a local health board<sup>2</sup>, a special health authority<sup>3</sup>, or any other body, other than an NHS foundation trust<sup>4</sup>, constituted<sup>5</sup> under the health service legislation<sup>6</sup>, in order to perform certain service in the armed forces<sup>7</sup> may have paid<sup>8</sup> to him, or to or for the benefit of his spouse or civil partner or other dependants nominated by him, a sum not exceeding the remuneration he would have received if he had continued to be so occupied, after deducting the amount of his service pay<sup>9</sup>. In the event of his death while performing his service, his widow or other dependants may be paid, during a period not exceeding 26 weeks from the date of his death, the sum which might have been paid to him had he still been performing his service during that period<sup>10</sup>.

1 As to strategic health authorities see PARA 94 et seq.

2 As to local health boards see PARA 74.

3 As to special health authorities see PARA 136 et seq.

4 As to NHS foundation trusts see PARA 174.

5 Ie under the National Health Service Act 2006, the National Health Service (Wales) Act 2006 or the National Health Service and Community Care Act 1990.

6 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 46(1), Sch 2 Pt I para 15 (substituted by the Health Authorities Act 1995 s 2(1), Sch 1 para 88; and amended by the National Health Service Reform and Health Care Professions Act 2002 s 1(3), Sch 1 Pt 2 para 36; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 12, 13(a); SI 2007/961).

7 The service in question is any relevant service (other than certain excepted forms of service) after 15 July 1950 of a description specified in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Sch 1 para 7: see ss 52(1), 64(1) (s 52(1) amended by the Statute Law (Repeals) Act 1977); and **ARMED FORCES** vol 2(2) (Reissue) PARA 88.

8 The paying authority is the strategic health authority, local health board, special health authority, or other body: Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Sch 2 Pt I para 15 (as substituted and amended: see note 6).

9 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 46(2) (amended by the Civil Partnership Act 2004 s 257, Sch 26 para 25(1), (2)). 'Service pay' means pay for performing relevant service to which the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Pt V (ss 46-53) applies, and includes marriage, civil partnership, family and other similar allowances: s 52(2)(a) (amended by the Civil Partnership Act 2004 Sch 26 para 26). In the case of a person occupied in more than one capacity mentioned in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Sch 2 Pt I, account must be taken, in relation to any one of those capacities, of the appropriate proportion of his service pay and not of the whole: s 46(2) proviso. As to civil partnerships see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW**.

10 Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 46(3). This provision, however, does not apply if his widow is entitled to a widow's pension, or his surviving civil partner is entitled to a surviving civil partner's pension, by virtue of certain statutory provisions: see s 46(3) (amended by the Superannuation Act 1972 s 29(1), Sch 6 para 30; the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 12(1), (2); the Civil Partnership Act 2004 Sch 26 para 25(1), (3)).

## **UPDATE**

### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

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### **88A. Quality accounts.**

Primary care trusts, NHS trusts all or most of whose hospitals, establishments and facilities are in England, special health authorities, NHS foundation trusts, must, in accordance with regulations made by the Secretary of State, publish in respect of each reporting period a document containing prescribed information relevant to the quality of (1) any NHS services that the body provides; (2) any NHS services that, under arrangements made by the body, are provided by a person not listed in the Health Act 2009 s 8(2) or (3); (3) any services that are provided in England and for the provision of which the body provides assistance or support under the National Health Service Act 2006 s 124(1) (primary ophthalmic services): Health Act 2009 s 8(1), (2). Specified persons providing NHS services also must publish such information: Health Act 2009 s 8(3). Supplementary provision about the duty to publish information about the quality of NHS services provided is made by the Health Act 2009 s 9. The power to make regulations is exercisable by statutory instrument: Health Act 2009 s 10(1). As to such regulations, see the National Health Service (Quality Accounts) Regulations 2010, SI 2010/279.

### **UPDATE**

#### **76-88 Provisions of common application**

Specified NHS bodies and certain other persons providing NHS services must publish information about the quality of NHS services which they provide: see the Health Act 2009 s 8-10; and PARA 88A.

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### ***C. EXERCISE OF FUNCTIONS BY STRATEGIC HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS***

#### **89. Functions of the Secretary of State exercisable by strategic health authorities and primary care trusts.**

Subject to certain limitations and restrictions<sup>1</sup> the following functions<sup>2</sup> of the Secretary of State<sup>3</sup> relating to the health service<sup>4</sup> are to be exercisable by both strategic health authorities<sup>5</sup> and primary care trusts<sup>6</sup>: (1) providing for instruction of officers of health bodies and other persons employed or contemplating employment in activities connected with health or welfare<sup>7</sup>; (2) providing services considered appropriate for discharging duties imposed on the Secretary of State and doing other things calculated to facilitate the discharge of such duties<sup>8</sup>; (3) conducting or assisting, by grants or otherwise, persons<sup>9</sup> to conduct research into matters relating to illness<sup>10</sup> or other matters<sup>11</sup>; (4) arranging with any person or body for that person or body to provide or assist in providing any service<sup>12</sup>; (5) supplying goods, services and other facilities to local authorities and other public bodies<sup>13</sup>; (6) securing the availability of facilities for research connected with clinical medicine or dentistry<sup>14</sup>.

Subject to similar limitations and restrictions<sup>15</sup>, the following functions of the Secretary of State relating to the health service are to be exercisable by primary care trusts and strategic health authorities, but only to the extent necessary to support and manage the performance of primary care trusts in the exercise of those functions<sup>16</sup>: (a) giving financial assistance to voluntary organisations<sup>17</sup>; (b) the separation of younger from older patients in hospital<sup>18</sup>; (c) the provision of hospital and other accommodation and other services<sup>19</sup>; (d) providing for the medical inspection of pupils<sup>20</sup>; (e) the provision of contraceptive services<sup>21</sup>; (f) the provision of vehicles for disabled people<sup>22</sup>; (g) the provision of a microbiological service<sup>23</sup>; (h) making accommodation available in connection with the provision of services<sup>24</sup>; (i) authorising use of hospital accommodation on payment<sup>25</sup>; (j) making accommodation or facilities available to non-resident private patients<sup>26</sup>; (k) forming and investing in companies<sup>27</sup>; (l) determining charges for prescribed services provided in respect of non-residents<sup>28</sup>; (m) determination of travelling and other allowances payable to members of a committee of a primary care trust<sup>29</sup>.

Subject to certain limitations and restrictions<sup>30</sup>, the following functions of the Secretary of State relating to the health service are to be exercisable by strategic health authorities<sup>31</sup>: (i) the duty to promote a comprehensive health service<sup>32</sup>; (ii) the giving of directions to NHS trusts about their exercise of any functions<sup>33</sup>; (iii) the acquisition, use and maintenance of property<sup>34</sup>; (iv) the payment of remuneration and allowances to chairman and members of the strategic health authority<sup>35</sup>; (v) approving medical practitioners as having special experience in the diagnosis or treatment of mental disorder<sup>36</sup>.

In exercising the functions referred to above<sup>37</sup>, strategic health authorities and primary care trusts must have regard to the NHS plan<sup>38</sup>. Every strategic health authority must exercise those functions for the benefit of its area or to secure the effective provision of services by primary care trusts and NHS trusts<sup>39</sup> for which they are the appropriate strategic health authority<sup>40</sup>.

Every primary care trust must exercise the functions referred to above<sup>41</sup>: (A) in so far as those functions consist of providing or securing the provision of services to patients<sup>42</sup>, other than the services referred to in head (B) below, for the benefit of the patients<sup>43</sup> of persons providing primary medical services<sup>44</sup> in respect of whom the primary care trust is the relevant primary

care trust<sup>45</sup>, and persons usually resident<sup>46</sup> in its area, or resident outside the United Kingdom<sup>47</sup> who are present in its area, and who do not fall under the responsibility<sup>48</sup> of another primary care trust<sup>49</sup>; (B) in so far as those functions consist of providing or securing the provision of accident and emergency services<sup>50</sup> and ambulance services, services provided at walk-in centres, facilities and services for testing for, and preventing the spread of, genito-urinary infections and diseases and for treating and caring for persons with such infections or diseases, services which the Secretary of State has a duty to provide in respect of the medical inspection and treatment of pupils, services relating to contraception, health promotion services, services in connection with drug and alcohol misuse, and any other services which the Secretary of State may direct, for the benefit of all persons present in their area<sup>51</sup>; (C) in so far as those functions relate to pilot schemes<sup>52</sup>, for the benefit of persons within the area of the appropriate strategic health authority and for which the trust is the relevant primary care trust<sup>53</sup>; (D) in so far as those functions consist of any other functions, generally as respects their area<sup>54</sup>.

1    Ie subject to the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 6 (see PARA 91) and reg 8 (see PARA 93). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, have effect as if made under the National Health Service Act 2006 s 7 (see PARA 7).

2    As to the meaning of 'functions' see PARA 6 note 3.

3    As to the Secretary of State see PARA 6 note 8.

4    As to the meaning of 'health service' see PARA 10 note 3.

5    As to strategic health authorities see PARA 94 et seq. The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, apply only in relation to strategic health authorities and primary care trusts established for areas in England: reg 1(2). Such bodies do not exist in relation to Wales; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6    National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(1), Sch 1 Pt 1 (amended by SI 2006/562); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to primary care trusts see PARA 111 et seq. See also note 5.

7    Ie under the Health Services and Public Health Act 1968 s 63(1), (5), (6): see PARA 20.

8    Ie under the National Health Service Act 2006 s 2: see PARA 11.

9    As to the meaning of 'person' see PARA 17 note 2.

10   As to the meaning of 'illness' see PARA 10 note 5.

11   Ie under the National Health Service Act 2006 Sch 1 para 13: see PARA 38.

12   Ie under the National Health Service Act 2006 s 12: see PARA 17.

13   Ie under the National Health Service Act 2006 ss 80, 81: see PARA 237.

14   Ie under the National Health Service Act 2006 s 258: see PARA 22.

15   See note 1.

16   National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(2), Sch 1 Pt 2 (reg 3(2) amended by SI 2007/559; National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, Sch 1 Pt 2 amended by SI 2006/1407; SI 2007/1818); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

17   Ie under the Health Services and Public Health Act 1968 s 64(1): see PARA 85.

18 Ie under the Chronically Sick and Disabled Persons Act 1970 s 17: see PARA 36.

19 Ie under the National Health Service Act 2006 ss 3(1), 4: see PARA 12. Subject to reg 6 (see PARA 91), the Secretary of State's functions relating to the health service under the National Health Service Act 2006 s 3(1) are to be exercisable by strategic health authorities for the purpose of securing, by arrangement with any person or body, the provision of certain specified services: see the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(2A) (added by SI 2007/559). As to the specified services see the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, Sch 5 (added by SI 2007/559; and amended by SI 2008/224).

20 Ie under the National Health Service Act 2006 Sch 1 paras 1, 2: see PARA 33.

21 Ie under the National Health Service Act 2006 Sch 1 para 8: see PARA 34.

22 Ie under the National Health Service Act 2006 Sch 1 paras 9, 10: see PARA 35.

23 Ie under the National Health Service Act 2006 Sch 1 para 12: see PARA 37.

24 Ie under the National Health Service Act 2006 s 168: see PARA 352.

25 Ie under the National Health Service Act 2006 s 189: see PARA 480.

26 Ie under the National Health Service Act 2006 s 267: see PARA 747.

27 Ie under the National Health Service Act 2006 s 223: see PARA 25.

28 Ie under the National Health Service Act 2006 s 175: see PARA 470.

29 Ie under the National Health Service Act 2006 Sch 3 para 11(3): see PARA 121.

30 Ie subject to the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 6 (see PARA 91) and reg 7 (see PARA 92).

31 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(3), Sch 2; National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

32 Ie under the National Health Service Act 2006 s 1: see PARA 10.

33 Ie under the National Health Service Act 2006 s 8(2)(c): see PARA 16.

34 Ie under the National Health Service Act 2006 s 211: see PARA 24.

35 Ie under the National Health Service Act 2006 Sch 2 para 2(1), (4): see PARA 102.

36 Ie under the Mental Health Act 1983 s 12(2): see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 482.

37 Ie the functions referred to in the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(1)-(3): see the text to notes 1-36.

38 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(4). The plan referred to is that published in July 2000: see reg 3(4).

39 Any reference to an NHS trust is to be construed as a reference to an NHS trust, all or most of whose hospitals, establishments or facilities are situated in England: National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 2(2)(b). As to NHS trusts see PARA 155 et seq. As to the meaning of 'hospital' see PARA 12 note 4. As to the meaning of 'facilities' see PARA 12 note 7.

40 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(5). Nothing in reg 3(5) limits the area in relation to which an approval of a medical practitioner for the purposes of the Mental Health Act 1983 s 12(2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 482) given by a strategic health authority has effect: National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration



Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(6). 'Appropriate strategic health authority' means: (1) in relation to a primary care trust, the strategic health authority whose area includes any part of the area of that primary care trust; (2) in relation to an NHS trust (other than a trust responsible for providing ambulance services), the strategic health authority in whose area all or most of the hospitals, establishments or facilities of the trust are situated; and (3) in relation to an NHS trust responsible for providing ambulance services, the strategic health authority in whose area the headquarters establishment responsible for control of those services is situated: National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 2(1).

41    Ie the functions referred to in the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(1) and (2): see the text to notes 1-29.

42    As to the meaning of 'patient' see PARA 15 note 6.

43    Ie other than any such patients who are detained in a prison in England. 'Prison' includes a young offender institution but not a secure training centre or a naval, military or air force prison; 'young offender institution' means a place for the detention of offenders sentenced to detention in a young offender institution or to custody for life; and 'secure training centre' means a place in which offenders subject to detention and training orders under the Powers of Criminal Courts (Sentencing) Act 2000 s 100 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1398) may be detained and given training and education and prepared for their release: National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 2(1) (definitions added by SI 2003/1497). As to prisons generally see **PRISONS**.

44    As to primary medical services see PARA 241. Subject to any directions which the Secretary of State may give as to any particular case or class of case, if there is doubt as to whether a person is a patient of any medical practitioner, or as to the identity of the medical practitioner of which a person is a patient, he must be treated as a person who is not the patient of any medical practitioner: see the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(9). As to the power of the Secretary of State to give directions see PARA 16.

45    See the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(7)(a)(i) (amended by SI 2003/1497; SI 2004/865). The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(7)(a) is expressed to be subject to provisions relating to the provision by a primary care trust of specific care services to persons over the age of 18 and children: see regs 3(7A)-(7G), 3A (reg 3(7A), (7B) added by SI 2006/359; National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, regs 3(7AA), (7C)-(7G), 3A added by SI 2007/559).

46    Subject to any directions which the Secretary of State may give as to any particular case or class of case, if there is doubt as to where a person is usually resident for these purposes he must be treated as usually resident at the address which he gives to the person or body providing him with services, as being that at which he usually resides; where he gives no such address, he must be treated as usually resident at the address which he gives, to the person or body providing him with services, as being his most recent address; and where his usual residence cannot be so determined, he must be treated as usually resident in the area in which he is present: National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(8) (amended by SI 2003/1497). However, a person who is detained in a prison in England, must, for the period of that detention, be treated as usually resident at the address of the prison in which he is detained (National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(8A) (reg 3(8A), (8B) added by SI 2003/1497); but this does not apply in relation to the commissioning of psychiatric hospital care for the purposes of the removal of a person detained in prison to a hospital under the Mental Health Act 1983 s 47 or s 48 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 535, 536) (National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(8B) (as so added)).

47    As to the meaning of 'United Kingdom' see PARA 15 note 8.

48    Ie under the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(7)(a)(i): see the text to notes 42-45.

49    See the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(7)(a)(ii) (substituted by SI 2003/1497). See also note 45.

50 'Accident and emergency services' are services provided at the accident and emergency department, or a minor injuries unit, of a health service hospital, and do not include any subsequent treatment connected with the provision of those services: National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(10). As to the meaning of 'health service hospital' see PARA 21 note 7.

51 See the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(7)(b).

52 As to the meaning of 'pilot scheme' see PARA 419.

53 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(7)(c).

54 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3(7)(d).

## UPDATE

### **89 Functions of the Secretary of State exercisable by strategic health authorities and primary care trusts**

NOTE 6--SI 2002/2375 Sch 1 Pt 1 further amended: SI 2008/1700.

TEXT AND NOTES 15-29--Also, head (n) making such arrangements as considered reasonable to enable independent mental health advocates to help qualifying patients (ie under the Mental Health Act 1983 s 130A (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 436)): SI 2002/2375 Sch 1 Pt 2 (amended by SI 2008/3166).

NOTE 19--SI 2002/2375 Sch 5 substituted: SI 2010/405.

TEXT AND NOTES 41-49--A primary care trust must also exercise the functions referred to in head (A) for the benefit of qualifying patients resident in Wales who are present in its area and who do not fall under the responsibility of another primary care trust; and qualifying patients present in Wales who are liable to be detained under the Mental Health Act 1983 in a hospital or registered establishment in its area and who do not fall under the responsibility of another primary care trust: SI 2002/2375 reg 3(7)(a)(iii), (iv) (added by SI 2008/3166). As to the meaning of 'qualifying patient' see SI 2002/2375 reg 2 (definition added by SI 2008/3166); and as to the meaning of 'registered establishment' see SI 2002/2375 reg 3(12) (added by SI 2008/3166).

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## **90. Functions not to be exercisable by primary care trusts.**

The following functions<sup>1</sup> exercisable by a strategic health authority<sup>2</sup> are not to be exercisable by primary care trusts<sup>3</sup>: (1) giving directions to NHS trusts<sup>4</sup> about their exercise of any functions<sup>5</sup>; (2) payment of remuneration and allowances to the chairman and members of a strategic health authority<sup>6</sup>; (3) approving medical practitioners as having special experience in the diagnosis or treatment of mental disorder<sup>7</sup>; (4) requesting fluoridation of water supplies<sup>8</sup>; (5) opt outs of additional and out of hours services in relation to primary medical services contracts<sup>9</sup>; (6) dispute resolution relating to patient lists<sup>10</sup>.

In addition any function conferred on a strategic health authority concerning the giving of any directions is not to be exercisable by a primary care trust<sup>11</sup>.

1 As to the meaning of 'functions' see PARA 6 note 3.

2 As to strategic health authorities see PARA 94 et seq. The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, apply only in relation to strategic health authorities and primary care trusts established for areas in England: reg 1(2). Such bodies do not exist in relation to Wales; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 5(1), Sch 3 (amended by SI 2004/865; SI 2006/562). As to primary care trusts see PARA 111 et seq. See also note 2.

4 As to references to NHS trusts see PARA 89 note 39.

5 Ie under the National Health Service Act 2006 s 8(2)(c): see PARA 16.

6 Ie under National Health Service Act 2006 Sch 2 para 2(1), (4): see PARA 102.

7 Ie under the Mental Health Act 1983 s 12(2): see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 482.

8 Ie under the Water Industry Act 1991 s 87: see **WATER AND WATERWAYS** vol 100 (2009) PARA 413.

9 Ie under the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 3 (see PARA 246), and the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 4 (see PARA 268).

10 Ie under the Directions as to the functions of Strategic Health Authorities (GMS Contract Disputes) dated 8 March 2004 and the Directions as to the functions of Strategic Health Authorities (PMS Agreement Disputes) dated 18 March 2004.

11 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 5(2). As to the general power of a strategic health authority to give directions see PARA 107.

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# **91. Limitations and restrictions on the exercise of functions relevant to both strategic health authorities and primary care trusts.**

The exercise by a strategic health authority or primary care trust<sup>1</sup> of the functions of the Secretary of State<sup>2</sup> relating to the health service<sup>3</sup> is subject to such limitations as the Secretary of State may direct<sup>4</sup>, and must be in accordance with any directions which are given by the Secretary of State or, subject to any such directions, by the appropriate strategic health authority<sup>5</sup>.

The Secretary of State's general power as to services<sup>6</sup> is exercisable by a strategic health authority or primary care trust only to such extent as is necessary for the proper exercise of one or more other functions exercisable by such body. Except where the Secretary of State otherwise directs, a strategic health authority and primary care trust must not exercise the functions of the Secretary of State in relation to university clinical teaching and research<sup>7</sup> in so far as those functions are concerned with securing the availability of facilities for clinical teaching<sup>9</sup>. The Secretary of State's function in relation to the remuneration, allowances and pensions of members of primary care trusts<sup>10</sup> is to be exercisable by a strategic health authority or primary care trust only in relation to an executive committee<sup>11</sup>.

1 The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, apply only in relation to strategic health authorities and primary care trusts established for areas in England: reg 1(2). Such bodies do not exist in relation to Wales; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111 et seq.

2 As to the Secretary of State see PARA 6 note 8.

3 I.e. the functions referred to in the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 3: see PARA 89.

4 As to the general power of the Secretary of State to give directions see PARA 16.

5 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 6(1) (reg 6(1), (2) amended by SI 2006/562). As to the meaning of 'appropriate strategic health authority' see PARA 89 note 40. As to the general power of a strategic health authority to give directions see PARA 107. Nothing in the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, is to be taken as giving directions under the National Health Service Act 2006 s 7 (see PARA 7) for the exercise of any functions conferred on or vested in the Secretary of State with respect to the making of any order or any regulations, the giving of any directions other than under s 8(2)(c) (see PARA 16), or the determination of the amount of the remuneration, or of any allowance, which is, by virtue of those regulations, to be paid by a strategic health authority to its chairman and members: National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 6(2) (as so amended); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

6 I.e. the power under the National Health Service Act 2006 s 2: see PARA 11.

7 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 6(3); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

8 le under the National Health Service Act 2006 s 258: see PARA 22.

9 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 6(4); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

10 le under the National Health Service Act 2006 Sch 3 para 11(3): see PARA 121.

11 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 6(6) (added by SI 2007/1818). An executive committee is one appointed under the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(1) (see PARA 118): National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 6(6) (as so added).

## **UPDATE**

### **91 Limitations and restrictions on the exercise of functions relevant to both strategic health authorities and primary care trusts**

TEXT AND NOTES 6, 7--SI 2002/2375 reg 6(3) amended, reg 6(3A)-(3D) (power of strategic health authority to make arrangements for involvement of service users in matters relating to provision of health services) added: SI 2008/2677.

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## **92. Limitations and restrictions on the exercise of functions relevant to strategic health authorities only.**

The Secretary of State's<sup>1</sup> function in relation to the giving of directions to NHS trusts<sup>2</sup> about their exercise of any functions<sup>3</sup> is to be exercisable by a strategic health authority<sup>4</sup> only in relation to NHS trusts for which it is the appropriate strategic health authority<sup>5</sup>. Approval by a strategic health authority of a medical practitioner as having special experience in the diagnosis and treatment of mental disorder<sup>6</sup> may be given only after carrying out such consultations, and the obtaining of such advice, as the Secretary of State may direct<sup>7</sup>, and for such periods as the Secretary of State may direct<sup>8</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to references to NHS trusts see PARA 89 note 39.

3 I.e. the function under the National Health Service Act 2006 s 8(2)(c): see PARA 16.

4 The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, apply only in relation to strategic health authorities established for areas in England: reg 1(2). Such bodies do not exist in relation to Wales; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to strategic health authorities see PARA 94 et seq.

5 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 7(1). As to the meaning of 'appropriate strategic health authority' see PARA 89 note 40.

6 I.e. for the purposes of the Mental Health Act 1983 s 12(2): see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 482.

7 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 7(2)(a). As to the general power of the Secretary of State to give directions see PARA 16.

8 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 7(2)(b).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(3) HEALTH SERVICE BODIES/(i) In general/C. EXERCISE OF FUNCTIONS BY STRATEGIC HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS/93. Limitations and restrictions on the exercise of functions relevant to primary care trusts only.

### **93. Limitations and restrictions on the exercise of functions relevant to primary care trusts only.**

In exercising the functions of the Secretary of State<sup>1</sup> in relation to high security psychiatric services<sup>2</sup>, a primary care trust<sup>3</sup> may only enter into an NHS contract<sup>4</sup> for the provision of such services with an NHS trust<sup>5</sup> approved by the Secretary of State<sup>6</sup> as a provider of such services in relation to England<sup>7</sup>, or, with the consent of the Secretary of State, with an NHS trust approved by the Welsh Ministers<sup>8</sup> as a provider of such services in relation to Wales<sup>9</sup>. In addition, a primary care trust may not arrange with any other person<sup>10</sup> or body (including voluntary organisations) for that person or body to provide such services<sup>11</sup>, and must have the approval of the Secretary of State to the arrangements for providing or securing the provision of such services<sup>12</sup>.

The Secretary of State's function of conducting or assisting research into matters relating to illness<sup>13</sup> or other matters<sup>14</sup> is to be exercisable by a primary care trust only to the extent that it does not consist of establishing or recognising research ethics committees<sup>15</sup>. Except where the Secretary of State otherwise directs, his functions in relation to the forming and investing in companies<sup>16</sup> are only to be exercisable by a primary care trust all or part of whose area is situated within the area of a local LIFT<sup>17</sup> approved by the Secretary of State<sup>18</sup>, and for the purpose of forming and investing in a local LIFT company operating in the area of that trust<sup>19</sup>.

In exercising the Secretary of State's functions<sup>20</sup> to the extent that they consist of providing or securing the provision of any specialised services<sup>21</sup>, and preparing and implementing population screening programmes<sup>22</sup>, a primary care trust must have the approval of the appropriate strategic health authority<sup>23</sup> to the arrangements for providing or securing the provision of such services<sup>24</sup>. In exercising the Secretary of State's functions<sup>25</sup> to the extent that they consist of: (1) providing or securing the provision of facilities and services for testing for, and preventing the spread of, AIDS, HIV and genito-urinary infections and diseases<sup>26</sup>, and treating and caring for persons with genito-urinary infections or diseases<sup>27</sup>; and (2) the provision<sup>28</sup> of services relating to contraception<sup>29</sup>, a primary care trust must ensure that it complies with the specified conditions<sup>30</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 I.e. the functions under the National Health Service Act 2006 s 4: see PARA 12.

3 The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, apply only in relation to primary care trusts established for areas in England: reg 1(2). Such bodies do not exist in relation to Wales; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to primary care trusts see PARA 111 et seq.

4 As to the meaning of 'NHS contract' see PARA 228.

5 As to references to NHS trusts see PARA 89 note 39.

6 I.e. under the National Health Service Act 2006 Sch 4 para 15(2), (3): see PARA 169.

7 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(1)(a)(i); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

8     Ie under the National Health Service (Wales) Act 2006 Sch 3 para 15(2), (3). As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

9     National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(1)(a)(ii); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

10    As to the meaning of 'person' see PARA 17 note 2.

11    National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(1)(b).

12    National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(1)(c).

13    As to the meaning of 'illness' see PARA 10 note 5.

14    Ie the function under the National Health Service Act 2006 Sch 1 para 13: see PARA 38.

15    National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(2); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). 'Research ethics committee' means an ethics committee established or recognised in accordance with the Medicines for Human Use (Clinical Trials) Regulations 2004, SI 2004/1031, Pt 2 (regs 5-10) (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 84 et seq), or any other committee established to advise on the ethics of research investigations on human beings and recognised for that purpose by or on behalf of the Secretary of State: National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 2(1).

16    Ie the functions under the National Health Service Act 2006 s 223: see PARA 25.

17    'LIFT' means a Local Improvement Finance Trust approved by the Secretary of State for the purposes of improving primary care facilities and services in a particular area, and 'LIFT company' means a Local Improvement Finance Trust company established to deliver the improvements in that area: National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 2(1).

18    National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(3)(a); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

19    National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(3)(b).

20    Ie the functions specified in the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, Sch 1: see PARA 89.

21    National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(4)(a). 'Specialised services' means services which are, or are to be, planned, and the provision of which is, or is to be, arranged, by primary care trusts acting jointly or by a joint committee of primary care trusts on behalf of a population of one million or more but does not include high security psychiatric services: reg 2(1).

22    National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(4)(b). 'Population screening programme' means a programme for testing a particular class of persons for the purpose of detecting whether those persons have a particular illness or are at risk of contracting such an illness: reg 2(1).

23    As to the meaning of 'appropriate strategic health authority' see PARA 89 note 40.

24    National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(4).

25    Ie the functions specified in the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, Sch 1: see PARA 89.



26 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(5)(a)(i). 'AIDS' means Acquired Immune Deficiency Syndrome; and 'HIV' means Human Immunodeficiency Virus: reg 2(1).

27 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(5)(a)(ii).

28 le under the National Health Service Act 2006 s 5, Sch 1 para 8: see PARA 34.

29 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(5)(b); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

30 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 8(5). The specified conditions are that: (1) arrangements are in place for the application to those facilities or services of quality standards which are in accordance with any relevant guidance given by the Secretary of State (reg 8(6)(a)); (2) arrangements are in place for co-ordinating the planning of those facilities and services with the planning of the facilities and services for the treating and caring for persons with AIDS or infected with HIV (reg 8(6)(b)); and (3) the planning of the facilities and services for testing for, and preventing the spread of, AIDS and HIV takes account of the epidemiology of HIV infection in the area of the trust and targets those persons or classes of persons most vulnerable to infection (reg 8(6)(c)). As to the meaning of 'facilities' see PARA 12 note 7.

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## **(ii) Strategic Health Authorities**

### **A. STATUS AND MEMBERSHIP**

#### **94. Establishment and status.**

Each strategic health authority is a body corporate<sup>1</sup>. The strategic health authorities established by the Secretary of State<sup>2</sup> continue in existence<sup>3</sup>, but the Secretary of State may by order<sup>4</sup>: (1) vary the area in England for which a strategic health authority is established<sup>5</sup>; (2) abolish a strategic health authority<sup>6</sup>; (3) establish a new strategic health authority for an area in England<sup>7</sup>; (4) change the name by which a strategic health authority is known<sup>8</sup>. The Secretary of State must act<sup>9</sup> so as to ensure that the areas for which strategic health authorities are at any time established together comprise the whole of England<sup>10</sup>. A strategic health authority is not to be regarded as a servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown<sup>11</sup>.

1 National Health Service Act 2006 Sch 2 para 1. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**. Strategic health authorities exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. A strategic health authority is a public authority for the purposes of the Freedom of Information Act 2000: see s 3, Sch 1 Pt III (amended by SI 2002/2469; National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(a)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

2 Strategic health authorities were originally established under the National Health Service Act 1977 s 8 (repealed). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 National Health Service Act 2006 s 13(1). As to the membership and proceedings of strategic health authorities see PARAS 95-101. As to the functions of strategic health authorities see PARA 105 et seq.

4 No order may be made under the National Health Service Act 2006 s 13 until after the completion of such consultation as may be prescribed by regulations made by the Secretary of State: ss 8(4), 275(1). Consultation requirements in such regulations are in addition to, and not in substitution for, any other consultation requirements which may apply: s 8(5). As to the prescribed consultation requirements see the Strategic Health Authorities (Consultation on Changes) Regulations 2003, SI 2003/1617, which by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) have effect under the National Health Service Act 2006 s 8(4). The power under s 272(8) (see PARA 9) to make incidental or supplemental provision includes, in particular, in its application to orders made under s 13, power to make provision for the transfer of staff, property and liabilities: s 13(7). As to the meaning of 'property' see PARA 4 note 9. As to the making of orders and regulations generally see PARA 9. Orders which relate to individual strategic health authorities are treated as local in nature and are not recorded in this work.

5 National Health Service Act 2006 s 13(2)(a).

6 National Health Service Act 2006 s 13(2)(b). The liabilities which may be transferred by virtue of s 13 and s 272(8) (see PARA 9) to a relevant transferee on the abolition of a strategic health authority include criminal liabilities: s 13(8). 'Relevant transferee' means another strategic health authority, a primary care trust, an NHS trust, a special health authority, or an NHS foundation trust: s 13(9). As to primary care trusts see PARA 111 et seq. As to NHS trusts see PARA 155. As to special health authorities see PARA 136. As to NHS foundation trusts see PARA 174.

7 National Health Service Act 2006 s 13(2)(c).

8 National Health Service Act 2006 s 13(2)(d). A strategic health authority is called such name, in addition to the title 'Strategic Health Authority', as appears to the Secretary of State appropriately to signify the connection

of the authority with the area for which it is established (s 13(3)(a)), and is specified in the order establishing the authority or in an order changing the name by which the authority is known (s 13(3)(b)).

9 le under the National Health Service Act 2006 s 13.

10 National Health Service Act 2006 s 13(6).

11 See the National Health Service and Community Care Act 1990 s 60 (amended by the Employment Rights Act 1996 s 240, Sch 1 para 45(1), (4); the National Health Service Reform and Health Care Professions Act 2002 s 1(3), Sch 1 Pt 2 paras 39, 45; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 128, 131). This provision may be excluded or modified by order: see National Health Service and Community Care Act 1990 s 60(5), (6). As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

## **UPDATE**

### **94 Establishment and status**

NOTE 4--SI 2003/1617 amended: SI 2008/528.

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## 95. Membership.

A strategic health authority<sup>1</sup> consists of: (1) a chairman appointed by the Secretary of State<sup>2</sup>; (2) not more than a prescribed<sup>3</sup> number of persons (not being officers of the authority) appointed by the Secretary of State<sup>4</sup>; and (3) a prescribed number of officers of the authority<sup>5</sup>. Regulations may provide for a person of a prescribed description who is not an officer of a strategic health authority to be treated for these purposes<sup>6</sup> as if he were such an officer<sup>7</sup>.

Provision may be made by regulations as to: (a) the appointment and tenure of office of the chairman, vice-chairman and members of a strategic health authority<sup>8</sup>; (b) the appointment and tenure of office of any members of a committee or sub-committee of a strategic health authority who are not members of the authority<sup>9</sup>; (c) the appointment and tenure of office of any members of a joint committee or joint sub-committee including a strategic health authority who are not members of the authority<sup>10</sup>; (d) the circumstances in which a member of a strategic health authority who is (or must be regarded as) an officer of the authority may be suspended from performing his functions as a member<sup>11</sup>; (e) the appointment and constitution of committees and sub-committees (and joint committees and joint sub-committees) of (or including) a strategic health authority (including any such committees consisting wholly or partly of persons who are not members of the authority in question)<sup>12</sup>; (f) the procedure of a strategic health authority and of such committees and sub-committees as are mentioned in head (e) above<sup>13</sup>; and (g) cases where the post of chief officer or any other officer of a strategic health authority is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person<sup>14</sup>.

1 As to the establishment and status of strategic health authorities see PARA 94. As to the functions of strategic health authorities see PARA 105 et seq. As to the protection from liability of members of strategic health authorities see PARA 82.

2 National Health Service Act 2006 Sch 2 para 3(a). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation to the Appointments Commission of the power of appointment of the chairman and members of a strategic health authority see the Health Act 2006 s 58; and PARA 820. As to the tenure of office of the chairman see PARA 97. As to disqualification for appointment as chairman see PARA 98. The chairman and any member, not being also an employee, of a strategic health authority is disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1), Sch 1 Pt III (amended by SI 2002/2469); and **PARLIAMENT** vol 78 (2010) PARA 905.

3 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1). As to the making of regulations generally see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, have effect under the National Health Service Act 2006 Sch 2. The prescribed maximum number of non-officer members to be appointed to an authority is seven: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 2(1). 'Non-officer member' means a member of a strategic health authority who is appointed under the National Health Service Act 2006 Sch 2 para 3(b): Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

4 National Health Service Act 2006 Sch 2 para 3(b). Regulations may provide that all or any of the persons appointed as members of a strategic health authority under Sch 2 para 3(b) must hold posts of a prescribed description (Sch 2 para 4(a)), or must fulfil any other prescribed conditions (Sch 2 para 4(b)). See also note 2.

5 National Health Service Act 2006 Sch 2 para 3(c). Regulations must provide that each of the persons who is a member of a strategic health authority under Sch 2 para 3(c) must either hold an office of the strategic health authority of a prescribed description (Sch 2 para 5(a)), or be appointed by the chairman of the strategic

health authority and the persons appointed as members of the authority under Sch 2 para 3(b) (see the text to note 4) (Sch 2 para 5(b)). The prescribed number of officer members of an authority is five: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 2(3). Of the five officer members two must be the persons who hold the offices of chief executive and director of finance (see reg 2(4)(a), (5) (reg 2(4), (5) both amended by SI 2002/556)), and the other three must be appointed by the chairman and the non-officer members of the authority (see the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 2(4)(b) (as so amended)). Where more than one person is appointed jointly to a post in an authority which qualifies the holder for officer membership or in relation to which an officer member is to be appointed, those persons become or are appointed as an officer member jointly, and count for the purposes of the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 2(3) as one person: reg 3. 'Officer member' means a member of a strategic health authority who is a member by virtue of the National Health Service Act 2006 Sch 2 para 3(c): Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to the employment of staff by an authority see PARA 103.

6 le for the purposes of the National Health Service Act 2006 Sch 2 and any other prescribed provision relating to members of (or of committees or sub-committees of) strategic health authorities: Sch 2 para 6.

7 National Health Service Act 2006 Sch 2 para 6.

8 National Health Service Act 2006 Sch 2 para 9(a). As to tenure of office see PARA 96. As to termination of office of non-officer members see PARA 97. As to disqualification for appointment of non-officer members see PARA 98. As to the vice chairman see PARA 99.

9 National Health Service Act 2006 Sch 2 para 9(b). As to committees and sub-committees see PARA 100.

10 National Health Service Act 2006 Sch 2 para 9(c). As to joint committees see PARA 100.

11 National Health Service Act 2006 Sch 2 para 9(d). As to the suspension of officer members see PARA 96.

12 National Health Service Act 2006 Sch 2 para 9(e).

13 National Health Service Act 2006 Sch 2 para 9(f). As to procedure see PARA 101.

14 National Health Service Act 2006 Sch 2 para 10. Such regulations may include provision modifying Sch 2: Sch 2 para 10. See further note 5.

## **UPDATE**

### **95 Membership**

NOTE 11--National Health Service Act 2006 Sch 2 para 9(d) substituted: Health Act 2009 Sch 3 para 10.

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## **96. Tenure of office.**

Subject to the provisions relating to the termination of office<sup>1</sup>, the tenure of office of a chairman<sup>2</sup> or non-officer member<sup>3</sup> of a strategic health authority<sup>4</sup> is for such period, not exceeding four years, as the Secretary of State<sup>5</sup> may specify on making the appointment<sup>6</sup>. The tenure of office of an appointed officer member<sup>7</sup> of a strategic health authority is for such period as the appointing authority<sup>8</sup> may specify on making the appointment<sup>9</sup>.

An officer member of an authority ceases to hold office as a member where he ceases to hold a post in the authority or to hold the same post in it as when he commenced his term of office<sup>10</sup>. If the appointing authority is of the opinion that it is not in the interest of the authority that an appointed officer member of an authority should continue to hold office as member, the appointing authority must forthwith terminate his tenure of office<sup>11</sup>. If an officer member of an authority is suspended from his post in the authority he must be suspended from performing his functions as a member for the period of his suspension<sup>12</sup>. An appointed officer member of an authority is, on the termination of the period of his tenure of office, eligible for reappointment<sup>13</sup>.

1    le subject to the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8: see PARA 97.

2    As to the chairman see PARA 95.

3    As to the meaning of 'non-officer member' see PARA 95 note 3.

4    As to the establishment and status of strategic health authorities see PARA 94. As to the membership of strategic health authorities see PARA 95. As to the functions of strategic health authorities see PARA 105 et seq.

5    As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

6    Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 4(1). As to the disqualification for office of non-officer members see PARA 98. As to the termination of office of non-officer members see PARA 97.

7    'Appointed officer member' means an officer member who is appointed in accordance with the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 2(4)(b) (see PARA 95 note 5): Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2). As to the meaning of 'officer member' see PARA 95 note 5.

8    'Appointing authority' means, in relation to an appointed officer member of an authority, the person or persons responsible for his appointment in accordance with the National Health Service Act 2006 Sch 3: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to the meaning of 'person' see PARA 17 note 2.

9    Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 4(2). This provision is expressed to be subject to reg 5: see the text to notes 10-12.

10   Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 5(1).

11   Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 5(2).

12   Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 5(3).

13   Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 6.



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## **97. Termination of office: chairman and non-officer members.**

The following provisions do not apply to officer members<sup>1</sup> of a strategic health authority<sup>2</sup>.

The chairman<sup>3</sup> or a member<sup>4</sup> of a strategic health authority may resign his office at any time during the period for which he was appointed by giving notice in writing<sup>5</sup> to the Secretary of State<sup>6</sup>. Where during his period of membership a member of an authority is appointed to be the chairman of that authority, his tenure of office as a member terminates when his appointment as chairman takes effect<sup>7</sup>.

If the Secretary of State is of the opinion that it is not in the interests of the health service<sup>8</sup> in the area for which an authority acts<sup>9</sup>, or it is not conducive to the good management of an authority<sup>10</sup>, for a person whom he has appointed as the chairman or a member of that authority to continue to hold that office, the Secretary of State may forthwith terminate his tenure of office<sup>11</sup>. If the chairman or a member of an authority has failed to attend a meeting of that authority for a period of three months<sup>12</sup>, the Secretary of State must forthwith terminate the tenure of office of the chairman or that member<sup>13</sup> unless he is satisfied that the absence was due to a reasonable cause<sup>14</sup> and the chairman or member will be able to attend meetings of that authority within such period as the Secretary of State considers reasonable<sup>15</sup>.

Where a person has been appointed to be the chairman or a member of an authority: (1) if it comes to the notice of the Secretary of State that the person has become disqualified for appointment<sup>16</sup>, the Secretary of State must forthwith notify him in writing of such disqualification<sup>17</sup>; or (2) if it comes to the notice of the Secretary of State that at the time of his appointment the person was so disqualified, the Secretary of State must forthwith declare that he was not duly appointed and so notify him in writing<sup>18</sup>; and, upon receipt of any such notification, his tenure of office, if any, is terminated and he must cease to act as such chairman or member<sup>19</sup>. If it appears to the Secretary of State that the chairman or a member of an authority has failed to comply with the provisions relating to the disclosure of a pecuniary interest<sup>20</sup> he may forthwith terminate that person's tenure of office<sup>21</sup>.

Subject to the provisions relating to disqualification for membership<sup>22</sup>, the chairman or a member of an authority is, on the termination of his tenure of office, eligible for reappointment<sup>23</sup>.

1 As to the meaning of 'officer member' see PARA 95 note 5.

2 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 7. As to the establishment and status of strategic health authorities see PARA 94. As to the membership of strategic health authorities see PARA 95. As to the tenure of office of members of strategic health authorities see PARA 96. As to the functions of strategic health authorities see PARA 105 et seq.

3 As to the chairman see PARA 95.

4 'Member', in relation to a strategic health authority, does not include its chairman, and 'members' and 'membership' must be construed accordingly: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2).

5 As to the meaning of 'writing' see PARA 7 note 2.

6 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(1). As to the Secretary of State see PARA 6 note 8. The date on which a resignation by notice given pursuant to reg 8(1) takes effect is: (1) where a date is specified in the notice as being that on which the resignation is to take effect, that



date (reg 8(2)(a)); and (2) in any other case, the date on which the notice is received by the Secretary of State (reg 8(2)(b)).

7 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(3).

8 As to the meaning of 'health service' see PARA 10 note 3.

9 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(4)(a).

10 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(4)(b).

11 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(4).

12 As to the meaning of 'month' see PARA 28 note 16.

13 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(5) (amended by SI 1997/2991).

14 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(5)(a).

15 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(5)(b).

16 Ie under the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10: see PARA 98.

17 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(6)(a).

18 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(6)(b).

19 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(6).

20 Ie with the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 16(1): see PARA 101.

21 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(7).

22 Ie subject to the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10: see PARA 98.

23 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 9.

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## **98. Disqualification for appointment: chairman and non-officer members.**

The following provisions do not apply to officer members<sup>1</sup> of a strategic health authority<sup>2</sup>.

A person is disqualified for appointment as the chairman<sup>3</sup> or a member<sup>4</sup> of a strategic health authority if:

- 45 (1) he has within the preceding five years been convicted in the United Kingdom<sup>5</sup>, the Channel Islands or the Isle of Man of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine<sup>6</sup>;
- 46 (2) he is the subject of a bankruptcy restrictions order or an interim order<sup>7</sup>;
- 47 (3) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body<sup>8</sup>;
- 48 (4) he has had his name removed<sup>9</sup> from any practitioners list<sup>10</sup> and has not subsequently had his name included in such a list or a new list<sup>11</sup>;
- 49 (5) he is suspended as respects the provision of general ophthalmic services or pharmaceutical services by a direction<sup>12</sup> of the tribunal<sup>13</sup>;
- 50 (6) he is a person whose tenure of office as the chairman or a member of a strategic health authority has<sup>14</sup> been terminated<sup>15</sup>;
- 51 (7) he is a chairman or a member of another strategic health authority<sup>16</sup>, or a special health authority other than certain specified authorities<sup>17</sup>, or a primary care trust<sup>18</sup>;
- 52 (8) he is a chairman or director of an NHS trust<sup>19</sup>;
- 53 (9) he is a chairman or non-executive director of an NHS foundation trust<sup>20</sup>;
- 54 (10) he holds any paid appointment or office with an NHS trust, an NHS foundation trust or a primary care trust<sup>21</sup>;
- 55 (11) he holds any paid appointment or office with another strategic health authority or a special health authority<sup>22</sup>;
- 56 (12) he is the chairman or another member of the Independent Regulator of NHS Foundation Trusts<sup>23</sup>.

Where a person is disqualified under head (3) above he may, after the expiry of the period of two years beginning with the date on which he was dismissed, apply in writing<sup>24</sup> to the Secretary of State<sup>25</sup> to remove the disqualification, and the Secretary of State may direct that the disqualification cease<sup>26</sup>. Where a person is disqualified under head (6) above, the disqualification ceases on the expiry of the period of two years beginning with the date of the termination of his tenure of office or such longer period as the Secretary of State specifies when terminating his period of office, but the Secretary of State may, on application being made to him by that person, reduce the period of disqualification<sup>27</sup>.

1 As to the meaning of 'officer member' see PARA 95 note 5.

2 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 7. As to the establishment and status of strategic health authorities see PARA 94. As to the membership of strategic health authorities see PARA 95. As to the tenure of office of members of strategic health authorities see PARA 96. As to the functions of strategic health authorities see PARA 105 et seq.

- 3 As to the appointment of the chairman see PARA 95.
- 4 As to the meaning of 'member' see PARA 97 note 4.
- 5 As to the meaning of 'United Kingdom' see PARA 15 note 8.
- 6 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(a). For these purposes the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted: reg 10(2).
- 7 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(b) (substituted by SI 2006/1722). As to bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.
- 8 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(c). For these purposes a person must not be treated as having been in paid employment by reason only of his chairmanship or membership of or, in the case of an NHS foundation trust his chairmanship, governorship or non-executive directorship of, the health service body in question: reg 10(3) (amended by SI 2004/696). 'Health service body' means a strategic health authority, a special health authority, a primary care trust, an NHS trust, an NHS foundation trust, the Independent Regulator of NHS Foundation Trusts, and the Health Protection Agency: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2) (definition amended by SI 1998/646; SI 2000/696; SI 2004/696; SI 2005/525; SI 2005/1622). As to special health authorities see PARA 136. As to primary care trusts see PARA 111 et seq. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to the Independent Regulator of NHS Foundation Trusts see PARA 188 et seq. As to the Health Protection Agency see PARA 213 et seq. As to redundancy see **EMPLOYMENT** vol 40 (2009) PARA 790 et seq.
- 9 Ie by a direction under the National Health Service Act 1977 s 46 (repealed).
- 10 Ie prepared under the National Health Service Act 1977 Pt II (repealed).
- 11 See the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(d) (amended by SI 2004/865). A new list is one prepared pursuant to the National Health Service Act 2006 s 91 (see PARA 248), s 106 (see PARA 283) or s 146 (see PARA 417): Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(d) (as so amended); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).
- 12 Ie a decision made pursuant to the National Health Service Act 1977 s 49A(2) or s 49B(1) (both repealed).
- 13 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(e).
- 14 Ie pursuant to the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 8(4), (5) or (7): see PARA 97.
- 15 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(f).
- 16 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(g)(i).
- 17 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(g)(ii). The specified special health authorities are: the Mental Health Act Commission; the National Institute for Health and Clinical Excellence; the National Treatment Agency; NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG); the NHS Institute for Innovation and Improvement; the NHS Professionals Special Health Authority: Sch 2 (amended by SI 1997/2991; SI 1999/946; SI 2000/696; SI 2001/751; SI 2001/2630; SI 2001/4045; SI 2004/17; SI 2005/6; SI 2005/497; SI 2005/502; SI 2005/1446; SI 2005/1781; SI 2005/2529; SI 2005/2532; SI 2006/635). As to such special health authorities see PARA 145 et seq.
- 18 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(g)(iii) (reg 10(1)(g)(iii), (3A) added by SI 2000/696). A person is not so disqualified by virtue of being the chairman or a member of a primary care trust during the trust's preparatory period: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(3A) (as so added).
- 19 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(h).
- 20 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(hh) (added by SI 2004/696).
- 21 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(j) (amended by SI 2000/696; SI 2004/696). A person is not so disqualified by virtue of holding any paid appointment or office

where he holds a post in an institution within the higher education sector, or a post in a university which is not such an institution, or he is a person providing or performing primary medical services, and the paid appointment or office is a part-time appointment or office, other than as chairman or as a director, with an NHS trust or a primary care trust: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(4) (substituted by SI 1997/2991; and amended by SI 2000/696, SI 2002/556, SI 2004/865). 'Institution within the higher education sector' has the same meaning as in the Further and Higher Education Act 1992 (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 579): Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2) (definition added by SI 2002/556). As to primary medical services see PARA 241.

22 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(k). A person is not so disqualified by virtue of holding any paid appointment or office where he holds a post in an institution within the higher education sector, or a post in a university which is not such an institution, or he is a person providing general ophthalmic services or pharmaceutical services, or providing or performing primary medical services or primary dental services, and the paid appointment or office is a part-time appointment or office, other than as chairman or as a member, with another strategic health authority or a special health authority: reg 10(5) (amended by SI 2002/556; SI 2004/865; SI 2006/562). As to general ophthalmic services see PARA 295. As to pharmaceutical services see PARA 339. As to primary medical services see PARA 241. As to primary dental services see PARA 277.

23 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 10(1)(m) (added by SI 2004/696).

24 As to the meaning of 'writing' see PARA 7 note 2.

25 As to the Secretary of State see PARA 6 note 8.

26 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 11(3). Where the Secretary of State refuses an application to remove a disqualification no further application may be made by that person until the expiry of the period of two years beginning with the date of the application and this provision applies to any subsequent application: reg 11(4).

27 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 11(5).

## **UPDATE**

### **98 Disqualification for appointment: chairman and non-officer members**

NOTE 17--'Mental Health Act Commission' no longer specified: SI 1996/707 Sch 2 (amended by SI 2009/462).

NOTE 22--SI 1996/707 reg 10(5) further amended in relation to England: SI 2008/1700.

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## **99. Vice chairman.**

The chairman and members<sup>1</sup> of a strategic health authority<sup>2</sup> may appoint one of their number, who is not an officer member<sup>3</sup> of the authority, to be vice-chairman, for such period, not exceeding the remainder of his term<sup>4</sup> as a member of the authority, as they may specify on appointing him<sup>5</sup>. Any member so appointed may at any time resign from the office of vice-chairman by giving notice in writing<sup>6</sup> to the chairman<sup>7</sup>.

Where a member of an authority is appointed to be vice-chairman<sup>8</sup>, and the chairman of the authority has died or has ceased to hold office<sup>9</sup>, or is unable to perform his duties as chairman owing to illness, absence from England and Wales or any other cause<sup>10</sup>, the vice-chairman must act as chairman until a new chairman is appointed or the existing chairman resumes his duties, as the case may be<sup>11</sup>.

1 As to the meaning of 'member' see PARA 97 note 4. As to the appointment of the chairman and membership generally see PARA 95.

2 As to the establishment and status of strategic health authorities see PARA 94. As to the functions of strategic health authorities see PARA 105 et seq.

3 As to the meaning of 'officer member' see PARA 95 note 5.

4 As to the tenure of office of members of strategic health authorities see PARA 96.

5 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 12(1).

6 As to the meaning of 'writing' see PARA 7 note 2.

7 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 12(2). The date on which a resignation by such a notice takes effect is, where a date is specified in the notice as being that on which the resignation is to take effect, that date (reg 12(3)(a)); and in any other case, the date on which the notice is received by the chairman (reg 12(3)(b)).

8 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 13(a).

9 As to termination of office see PARA 97.

10 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 13(b).

11 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 13. In such a case references to the chairman in the rules as to meetings and proceedings of authorities (see reg 15(1), Sch 3; and PARA 101) must, so long as there is no chairman able to perform his duties, be taken to include references to the vice-chairman: reg 13.

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## **100. Committees and sub-committees.**

Subject to such directions as may be given by the Secretary of State<sup>1</sup>, a strategic health authority<sup>2</sup> may, and if directed by him, must: (1) appoint committees of the authority<sup>3</sup>; or (2) together with one or more other strategic health authorities or primary care trusts<sup>4</sup>, appoint joint committees<sup>5</sup>, consisting, in either case, wholly or partly of the chairman and members<sup>6</sup> of the authority or authorities or primary care trusts or wholly of persons who are not members of the authority or authorities or primary care trusts in question<sup>7</sup>. A committee or joint committee so appointed may, subject to such directions as may be given by the Secretary of State or by the authority, authorities or primary care trusts in question, appoint sub-committees consisting: (a) wholly or partly of members of the committee or joint committee (whether or not they are members of the authority or authorities or primary care trusts in question)<sup>8</sup>; or (b) wholly of persons who are not members of the authority or authorities or primary care trusts<sup>9</sup>, or the committee of the authority or authorities or primary care trusts in question<sup>10</sup>.

On a committee, joint committee or sub-committee appointed under these provisions, the majority of the members must be persons who do not provide, or assist in providing, general ophthalmic services<sup>11</sup> or pharmaceutical services<sup>12</sup>, or provide or perform primary medical services<sup>13</sup> or primary dental services<sup>14</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the power of the Secretary of State to give directions see PARA 16.

2 As to the establishment and status of strategic health authorities see PARA 94. As to the functions of strategic health authorities see PARA 105 et seq.

3 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 14(1)(a) (reg 14(1), (2) substituted by SI 2000/696).

4 As to primary care trusts see PARA 111 et seq.

5 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 14(1)(b) (as substituted: see note 3).

6 As to the meaning of 'member' see PARA 97 note 4. As to the appointment of the chairman and membership generally see PARA 95.

7 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 14(1) (as substituted: see note 3).

8 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 14(2)(a) (as substituted: see note 3).

9 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 14(2)(b)(i) (as substituted: see note 3).

10 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 14(2)(b)(ii) (as substituted: see note 3).

11 As to general ophthalmic services see PARA 295.

12 As to pharmaceutical services see PARA 339.

13 As to primary medical services see PARA 241.

14 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 14(3) (amended by SI 2004/865; SI 2006/562). This provision does not apply to a discipline committee, a service committee, a committee whose sole function is to advise the authority, or a medical audit committee: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 14(3). 'Discipline committee' means an ophthalmic or pharmaceutical discipline committee or a joint discipline committee established under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664 (see PARA 619): Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2) (definition amended by SI 2006/562). 'Service committee' means an ophthalmic or pharmaceutical service committee, a joint services committee or a denture conciliation committee established under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2) (definition as so amended). 'Medical audit committee' means a committee whose functions are concerned with the analysis of the quality of medical care: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(2). As to primary dental services see PARA 277.

## **UPDATE**

### **100 Committees and sub-committees**

TEXT AND NOTES 11-14--SI 1996/707 reg 14(3) further amended in relation to England: SI 2008/1700.

NOTE 14--Definitions of 'discipline committee' and 'service committee' amended in relation to England: SI 2008/1700.

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### **101. Meetings and proceedings.**

The proceedings of a strategic health authority<sup>1</sup> are not invalidated by any vacancy in its membership or by any defect in a member's appointment<sup>2</sup>. The meetings and proceedings of an authority must be conducted in accordance with the statutory rules<sup>3</sup> and with standing orders made by the authority<sup>4</sup>. Subject to such directions as may be given by the Secretary of State, an authority may, on its own in the case of a committee or sub-committee<sup>5</sup> of the authority or jointly with other strategic health authorities or primary care trusts<sup>6</sup> in the case of a joint committee or sub-committee thereof, make, vary and revoke standing orders relating to the quorum, proceedings and place of meeting of such committee, joint committee or sub-committee but, subject to any such standing orders, the quorum, proceedings and place of meeting is such as the committee, joint committee or sub-committee may determine<sup>7</sup>.

Subject to the following provisions, if the chairman or a member<sup>8</sup> has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter<sup>9</sup> and is present at a meeting of the authority<sup>10</sup> at which the contract, proposed contract or other matter is the subject of consideration, he must at the meeting and as soon as practicable after its commencement disclose the fact and not take part in the consideration or discussion of the contract, proposed contract or other matter or vote on any question with respect to it<sup>11</sup>. An authority may, by standing orders<sup>12</sup>, provide for the exclusion of the chairman or a member from a meeting of the authority while any contract, proposed contract or other matter in which he has a pecuniary interest, direct or indirect, is under consideration<sup>13</sup>. The Secretary of State may, subject to such conditions as he may think fit to impose, remove any disability imposed by these provisions<sup>14</sup> in any case in which it appears to him in the interests of the health service<sup>15</sup> that the disability be removed<sup>16</sup>.

1 As to the establishment and status of strategic health authorities see PARA 94. As to the functions of strategic health authorities see PARA 105 et seq.

2 National Health Service Act 2006 Sch 2 para 14. As to the membership of strategic health authorities see PARA 95.

3 See the rules as to meetings and proceedings of strategic health authorities set out in the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 15(1), Sch 3.

4 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 15(1). Subject to those rules, to reg 16 (see the text to notes 8-16), and to such directions as may be given by the Secretary of State, an authority must make, and may vary or revoke, standing orders for the regulation of its proceedings and business; and such standing orders may contain provision for their own suspension: reg 15(2). As to the Secretary of State see PARA 6 note 8. As to the power of the Secretary of State to give directions see PARA 16.

5 As to committees and sub-committees see PARA 100.

6 As to primary care trusts see PARA 111 et seq.

7 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 15(3) (amended by SI 2000/696).

8 As to the meaning of 'member' see PARA 97 note 4. As to the appointment of the chairman see PARA 95.

9 Any remuneration, compensation or allowances payable to the chairman or a member by virtue of the National Health Service Act 2006 Sch 2 para 2 (see PARA 102) is not treated as a pecuniary interest for these purposes: Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 16(4); National



Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). Subject to the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 16(2) (see the text to notes 14-16) and reg 16(6), the chairman or a member is treated for these purposes as having an indirect pecuniary interest in a contract, proposed contract or other matter if: (1) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration (reg 16(5)(a)); or (2) he is a partner of, or in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration (reg 16(5)(b)); and in the case of married persons living together the interest of one spouse is, if known to the other, deemed for these purposes to be also an interest of the other (reg 16(5)). The chairman or a member is not treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only: (a) of his membership of a company or other body if he has no beneficial interest in any securities of that company or other body (reg 16(6)(a)); (b) of an interest of his as a person providing general ophthalmic services or pharmaceutical services or providing or performing primary medical services or primary dental services which cannot reasonably be regarded as an interest more substantial than that of others providing such of those services as he provides (reg 16(6)(b) (amended by SI 2004/865; SI 2006/562)); or (c) of an interest in any company, body or person with which he is connected as mentioned in the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 16(5) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of or in voting on, any question with respect to that contract, proposed contract or matter (reg 16(6)(c)). Where the chairman or a member has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, reg 16 does not prohibit him from taking part in the consideration or discussion of the contract, proposed contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest: reg 16(7).

'Public body' includes any body established for the purpose of carrying on, under national ownership, any industry or part of any industry or undertaking, the governing body of any university, university college or college, school or hall of a university and the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq): Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 1(3). 'Securities' means: (i) shares or debentures, whether constituting a charge on the assets of the company or other body or not, or rights or interests in any shares or such debentures; or (ii) rights (whether actual or contingent) in respect of money lent to or deposited with, any industrial and provident society or building society: reg 1(3). As to the meaning of 'person' see PARA 17 note 2. As to general ophthalmic services see PARA 295. As to pharmaceutical services see PARA 339. As to primary medical services see PARA 241. As to primary dental services see PARA 277. As to companies see **COMPANIES**. As to partnership see **PARTNERSHIP**. As to industrial and provident societies see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2394 et seq. As to building societies see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1856 et seq.

10 The Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 16 applies in relation to a committee or sub-committee and to a joint committee or sub-committee as it applies in relation to an authority and applies to a member of any such committee or sub-committee (whether or not he is also a member of an authority) as it applies to a member of an authority: reg 16(8).

11 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 16(1).

12 Ie made under the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 15(2): see note 4.

13 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 16(3). See also note 10.

14 Ie by the Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 16.

15 As to the meaning of 'health service' see PARA 10 note 3.

16 Health Authorities (Membership and Procedure) Regulations 1996, SI 1996/707, reg 16(2).

## UPDATE

### 101 Meetings and proceedings

NOTE 9--SI 1996/707 reg 16(6)(b) further amended in relation to England: SI 2008/1700.



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## **102. Pay and allowances.**

The Secretary of State<sup>1</sup> may pay to the chairman<sup>2</sup> of a strategic health authority<sup>3</sup>, and any member of a strategic health authority who is appointed by the Secretary of State<sup>4</sup>, such remuneration as he may determine with the approval of the Treasury<sup>5</sup>; and he may provide as he may determine with the approval of the Treasury for the payment of a pension, allowance or gratuity to or in respect of the chairman of a strategic health authority<sup>6</sup>. Where a person ceases to be chairman of a strategic health authority, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may make him a payment of such amount as the Secretary of State may determine with the approval of the Treasury<sup>7</sup>.

The Secretary of State may pay to a member of a strategic health authority, or of a committee or sub-committee of, or joint committee or joint sub-committee including, a strategic health authority<sup>8</sup>, such travelling and other allowances (including attendance allowance or compensation for the loss of remunerative time) as he may determine with the approval of the Treasury<sup>9</sup>.

Payments under these provisions must be made at such times, and in such manner and subject to such conditions, as the Secretary of State may determine with the approval of the Treasury<sup>10</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities see PARAS 89, 90.

2 As to the chairman see PARA 95.

3 National Health Service Act 2006 Sch 2 para 2(1)(a). As to the establishment and status of strategic health authorities see PARA 94. As to the functions of strategic health authorities see PARA 105 et seq.

4 National Health Service Act 2006 Sch 2 para 2(1)(b). As to membership of strategic health authorities see PARA 95.

5 National Health Service Act 2006 Sch 2 para 2(1). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 National Health Service Act 2006 Sch 2 para 2(2).

7 National Health Service Act 2006 Sch 2 para 2(3).

8 As to committees and sub-committees see PARA 100.

9 National Health Service Act 2006 Sch 2 para 2(4). Allowances may not be paid under Sch 2 para 2(4) except in connection with the exercise, in such circumstances as the Secretary of State may determine with the approval of the Treasury, of such functions as he may so determine: Sch 2 para 2(5).

10 National Health Service Act 2006 Sch 2 para 2(6).

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### **103. Staff.**

A strategic health authority<sup>1</sup> may employ such officers<sup>2</sup> as it may determine<sup>3</sup>, and may pay its officers such remuneration and allowances<sup>4</sup>, and employ them on such other terms and conditions<sup>5</sup>, as it may determine<sup>6</sup>. A strategic health authority must, in exercising these powers, act in accordance with regulations<sup>7</sup> and any directions<sup>8</sup> given by the Secretary of State<sup>9</sup>. Such regulations and directions may make provision with respect to any matter connected with the employment by a strategic health authority of its officers, including in particular provision: (1) with respect to the qualifications of persons who may be employed as officers of an authority<sup>10</sup>; (2) requiring an authority to employ a chief officer and officers of such other descriptions as may be prescribed<sup>11</sup> and to employ, for the purpose of performing prescribed functions of the authority or any other body, officers having prescribed qualifications or experience<sup>12</sup>; (3) as to the manner in which any officers of an authority must be appointed<sup>13</sup>; and (4) providing for approvals or determinations to have effect from a date specified in them<sup>14</sup>. A direction may relate to a particular officer or class of officer specified in the direction<sup>15</sup>,

Regulations may provide for the transfer of officers from one strategic health authority to another strategic health authority or to a special health authority<sup>16</sup>, and for arrangements under which the services of an officer of a strategic health authority are placed at the disposal of another strategic health authority, a special health authority or a local authority<sup>17</sup>. Directions<sup>18</sup> may be given by the Secretary of State: (a) to a strategic health authority to place the services of any of its officers at the disposal of another strategic health authority or of a special health authority<sup>19</sup>; and (b) to any strategic health authority to employ as an officer of the authority any person who is or was employed by another strategic health authority or by a special health authority and is specified in the direction<sup>20</sup>.

Where the registration of a dental practitioner<sup>21</sup> in the dentists register<sup>22</sup> is suspended by an interim suspension order<sup>23</sup>, or by a direction or an order of the health committee, the professional performance committee or the professional conduct committee of the General Dental Council<sup>24</sup> following a relevant determination<sup>25</sup> that that practitioner's fitness to practise is impaired<sup>26</sup>, the suspension does not terminate any contract of employment made between the dental practitioner and a strategic health authority, but a person whose registration is so suspended must not perform any duties under a contract made between him and an authority which involves the practice of dentistry<sup>27</sup>.

1 As to the establishment and status of strategic health authorities see PARA 94. As to the functions of strategic health authorities see PARA 105 et seq.

2 As to the meaning of 'officer' see PARA 28 note 5.

3 National Health Service Act 2006 Sch 2 para 7(1).

4 National Health Service Act 2006 Sch 2 para 7(2)(a).

5 National Health Service Act 2006 Sch 2 para 7(2)(b).

6 National Health Service Act 2006 Sch 2 para 7(2). As to the protection from liability of officers of strategic health authorities see PARA 82.

7 Regulations made in pursuance of the National Health Service Act 2006 Sch 2 para 7 may not require that all consultants employed by a strategic health authority must be so employed whole-time: Sch 2 para 7(13). The Secretary of State must, before he makes regulations under Sch 2 para 7, consult such bodies as he may

recognise as representing persons who, in his opinion, are likely to be affected by the regulations: Sch 2 para 8(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 Sch 2 para 7: the National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701: see PARA 87.

8 As to the power of the Secretary of State to give directions see PARA 16. As to the making of directions see PARA 9.

9 National Health Service Act 2006 Sch 2 para 7(3).

10 National Health Service Act 2006 Sch 2 para 7(4)(a).

11 'Prescribed' means prescribed by regulations: see the National Health Service Act 2006 s 275(1).

12 National Health Service Act 2006 Sch 2 para 7(4)(b).

13 National Health Service Act 2006 Sch 2 para 7(4)(c).

14 National Health Service Act 2006 Sch 2 para 7(6). The date may be before or after the date of giving the approvals or making the determinations but may not be before if it would be to the detriment of the officers to whom the approvals or determinations relate: Sch 2 para 7(7).

15 National Health Service Act 2006 Sch 2 para 7(5).

16 As to special health authorities see PARA 136.

17 National Health Service Act 2006 Sch 2 para 7(8). As to the meaning of 'local authority' see PARA 17 note 3.

18 The Secretary of State must, before he gives directions to a strategic health authority under the National Health Service Act 2006 Sch 2 para 7(12) in respect of any officer of a strategic health authority: (1) consult the officer about the directions (Sch 2 para 8(2)(a)); (2) satisfy himself that the strategic health authority of which he is an officer has consulted the officer about the placing or employment in question (Sch 2 para 8(2)(b)); or (3) in the case of a direction under Sch 2 para 7(12)(a), consult with respect to the directions such body as he may recognise as representing the officer (Sch 2 para 8(2)(c)). But if the Secretary of State considers it necessary to give directions under Sch 2 para 7(12)(a) for the purpose of dealing temporarily with an emergency (Sch 2 para 8(3)(a)), and has previously consulted bodies recognised by him as representing the relevant officers about the giving of directions for that purpose (Sch 2 para 8(3)(b)), he may disregard Sch 2 para 8(2) in relation to the directions (Sch 2 para 8(3)).

19 National Health Service Act 2006 Sch 2 para 7(12)(a).

20 National Health Service Act 2006 Sch 2 para 7(12)(b).

21 As to the meaning of 'dental practitioner' see PARA 87 note 7.

22 As to the dentists register see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 417.

23 National Health Service Act 2006 Sch 2 para 7(9)(a). An interim suspension order is an order under the Dentists Act 1984 s 32: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 459.

24 Ie under any of the Dentists Act 1984 s 27B, s 27C or s 30: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 456 et seq.

25 A 'relevant determination' that a practitioner's fitness to practise is impaired is a determination which is based solely on: (1) the ground mentioned in the Dentists Act 1984 s 27(2)(b) (deficient professional performance: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 458); (2) the ground mentioned in s 27(2)(c) (adverse physical or mental health: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 458); or (3) both those grounds: National Health Service Act 2006 Sch 2 para 7(10).

26 National Health Service Act 2006 Sch 2 para 7(9)(b).

27 National Health Service Act 2006 Sch 2 para 7(11). As to the meaning of 'the practice of dentistry' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 403: definition applied by Sch 2 para 7(11).

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#### **104. Trustees.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for the appointment of trustees for a strategic health authority<sup>3</sup> to hold property<sup>4</sup> on trust<sup>5</sup>: (1) for the general or any specific purposes of the authority (including the purposes of any specific hospital<sup>6</sup> or other establishment or facility at or from which services are provided by the authority)<sup>7</sup>; or (2) for any purposes relating to the health service<sup>8</sup>. Such an order may: (a) make provision as to the persons<sup>9</sup> by whom trustees must be appointed and generally as to the method of their appointment<sup>10</sup>; (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State)<sup>11</sup>; (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate<sup>12</sup>; and (d) make provision with respect to the term of office of any trustee and his removal from office<sup>13</sup>.

Where, under these provisions, trustees have been appointed for a strategic health authority, the Secretary of State may by order provide for the transfer of any trust property from the authority to the trustees<sup>14</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of orders generally see PARA 9. Such orders are treated as local in nature and are not recorded in this work.

3 As to the establishment and status of strategic health authorities see PARA 94. As to the functions of strategic health authorities see PARA 105 et seq.

4 As to the meaning of 'property' see PARA 4 note 9.

5 As to supplementary provision relating to such trusts see PARA 71. As to transfers of trust property see PARA 67.

6 As to the meaning of 'hospital' see PARA 12 note 4.

7 National Health Service Act 2006 Sch 2 para 13(1)(a).

8 National Health Service Act 2006 Sch 2 para 13(1)(b). As to the meaning of 'health service' see PARA 10 note 3.

9 As to the meaning of 'person' see PARA 17 note 2.

10 National Health Service Act 2006 Sch 2 para 13(2)(a).

11 National Health Service Act 2006 Sch 2 para 13(2)(b).

12 National Health Service Act 2006 Sch 2 para 13(2)(c).

13 National Health Service Act 2006 Sch 2 para 13(2)(d).

14 National Health Service Act 2006 Sch 2 para 13(3). Such orders are treated as local in nature and are not recorded in this work.

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## **B. FUNCTIONS**

### **105. Regulations.**

Regulations<sup>1</sup> may provide for any of the functions<sup>2</sup> exercisable by a strategic health authority<sup>3</sup> to be exercised by another strategic health authority<sup>4</sup>, by a special health authority<sup>5</sup>, or jointly with any one or more<sup>6</sup> primary care trusts<sup>7</sup>, local health boards<sup>8</sup> or other strategic health authorities<sup>9</sup>. Regulations may provide for any such functions to be exercised, on behalf of the strategic health authority by whom they are exercisable, by a committee, sub-committee or officer<sup>10</sup> of the strategic health authority<sup>11</sup>, and for any functions exercisable jointly<sup>12</sup> to be exercised, on behalf of the health service<sup>13</sup> bodies in question, by a joint committee or joint sub-committee<sup>14</sup>. Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a strategic health authority of any function exercisable by it by virtue of these provisions<sup>15</sup> are enforceable by or against that authority (and no other body)<sup>16</sup>.

Each strategic health authority must, in accordance with regulations, perform such functions in relation to arrangements for the provision of primary medical services<sup>17</sup> and of primary dental services<sup>18</sup> as may be prescribed by the regulations<sup>19</sup>. Such regulations may, in particular prescribe functions in relation to training<sup>20</sup>, and provide for appeals to the Secretary of State<sup>21</sup> or a prescribed body in relation to prescribed functions<sup>22</sup>.

Provision may be made by regulations with respect to the recording of information by a strategic health authority, and the furnishing of information by a strategic health authority to the Secretary of State, another strategic health authority or a special health authority<sup>23</sup>.

1 Except in prescribed cases, regulations under the National Health Service Act 2006 s 14 must not preclude a person or body by whom the function is exercisable apart from the directions or regulations from exercising the function: s 73(1)(c), (2). 'Prescribed' means prescribed by regulations: see s 275(1). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9.

2 I.e. functions exercisable under or by virtue of the National Health Service Act 2006 (including s 14) or any prescribed provision of any other Act. As to the meaning of 'functions' see PARA 6 note 3.

3 As to the establishment and status of strategic health authorities see PARA 94.

4 National Health Service Act 2006 s 14(1), (2)(a).

5 National Health Service Act 2006 s 14(1), (2)(b). As to special health authorities see PARA 136.

6 National Health Service Act 2006 s 14(1), (2)(c).

7 National Health Service Act 2006 s 14(3)(a). As to primary care trusts see PARA 111 et seq.

8 National Health Service Act 2006 s 14(3)(b). As to the meaning of 'local health board' see PARA 17 note 13.

9 National Health Service Act 2006 s 14(3)(c). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following orders have effect under these provisions: the Mental Health (After-care under Supervision) Regulations 1996, SI 1996/294 (amended by SI 2002/2469); the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375 (see PARAS 89-93, 106, 127); the Functions of Primary Care Trusts and Strategic Health Authorities and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (England) Regulations 2006, SI 2006/596.

- 10 As to the meaning of 'officer' see PARA 28 note 5. As to the appointment of officers see PARA 103.
- 11 National Health Service Act 2006 s 14(4)(a). As to committees and sub-committees see PARA 100.
- 12 Ie under the National Health Service Act 2006 s 14(2)(c): see the text to note 6.
- 13 As to the meaning of 'health service' see PARA 10 note 3.
- 14 National Health Service Act 2006 s 14(4)(b). As to joint committees and joint sub-committees see PARA 100.
- 15 Ie by virtue of the National Health Service Act 2006 s 14.
- 16 National Health Service Act 2006 Sch 2 para 16(1). This does not apply in relation to the joint exercise of any functions by a strategic health authority with another body under s 14(2)(c) (see the text to note 6): Sch 2 para 16(2).
- 17 Ie arrangements under the National Health Service Act 2006 s 92: see PARA 267.
- 18 Ie arrangements under the National Health Service Act 2006 s 107: see PARA 288.
- 19 National Health Service Act 2006 s 16(1).
- 20 National Health Service Act 2006 s 16(2)(a).
- 21 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.
- 22 National Health Service Act 2006 s 16(2)(b).
- 23 National Health Service Act 2006 Sch 2 para 17. At the date at which this volume states the law no such regulations had been made.



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### **106. Exercise of functions.**

The Secretary of State<sup>1</sup> may direct a strategic health authority<sup>2</sup> to exercise any of his functions<sup>3</sup> relating to the health service<sup>4</sup> which are specified in the directions<sup>5</sup>; and he may give directions to a strategic health authority about its exercise of any functions<sup>6</sup>. Provision has been made by regulations as to the exercise by a strategic health authority of certain of the Secretary of State's functions and the manner of such exercise<sup>7</sup>.

Subject as provided<sup>8</sup> and to any directions which may be given by the Secretary of State with respect to its exercise, any function exercisable by a strategic health authority<sup>9</sup> may, by arrangement with that authority, and subject to such restrictions and conditions as that authority may think fit, be exercised by another strategic health authority<sup>10</sup>; by a special health authority<sup>11</sup>; jointly with any one or more primary care trusts<sup>12</sup>, other strategic health authorities<sup>13</sup> or local health boards<sup>14</sup>; or on behalf of the authority by a committee, sub-committee or officer<sup>15</sup> of the authority<sup>16</sup>.

Any function exercisable by a strategic health authority under or in relation to arrangements made<sup>17</sup> for the provision of instruction for health officers and others, may by arrangement with that authority be exercised jointly with one or more other strategic health authorities, special health authorities, local health boards, primary care trusts or NHS trusts<sup>18</sup>. Any functions which a strategic health authority may be directed to exercise<sup>19</sup> in relation to the provision of facilities for university clinical teaching and research may by arrangement with that authority be exercised jointly with one or more other strategic health authorities, local health boards, special health authorities, primary care trusts or NHS trusts<sup>20</sup>. Any function exercisable by a strategic health authority under the Nursing and Midwifery Order 2001<sup>21</sup> may, by arrangement with that authority, be exercised by another strategic health authority, jointly with any one or more other strategic health authorities, or on behalf of the authority by a committee, sub-committee or officer of the authority, or a joint committee or joint sub-committee, of that authority and one or more other strategic health authorities<sup>22</sup>. Any function exercisable by a strategic health authority in relation to opt outs of additional and out of hours services under general medical services contracts or personal medical services agreements<sup>23</sup>, may be exercised on behalf of the authority by a committee, sub-committee or officer of the authority<sup>24</sup>.

Where, in relation to a single primary care trust, more than one strategic health authority is the appropriate strategic health authority<sup>25</sup>, the authorities concerned must enter into arrangements for the purpose of ensuring that, in any particular case, only one such authority exercises functions in relation to that primary care trust<sup>26</sup>.

Subject to any directions which may be given by the Secretary of State, a strategic health authority may enter into arrangements with a local health board or local health boards for the specified functions<sup>27</sup> which are exercisable by that local health board or boards, to be exercised by the strategic health authority<sup>28</sup>, jointly between the strategic health authority and the local health board or boards<sup>29</sup>, or on behalf of the strategic health authority and local health board by a joint committee or joint sub-committee<sup>30</sup>.

In exercising its functions a strategic health authority must have regard to any health improvement plan prepared by a primary care trust any part of whose area falls within its area<sup>31</sup>.

If the Secretary of State considers that a strategic health authority is not performing any of its functions adequately or at all, or that there are significant failings in the way the authority is

being run, he may make an intervention order<sup>32</sup>; and if he considers that an authority has failed to carry out any functions, or to comply with any regulations or directions relating to those functions, he may make an order declaring it to be in default<sup>33</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the establishment and status of strategic health authorities see PARA 94.

3 As to the meaning of 'functions' see PARA 6 note 3.

4 As to the meaning of 'health service' see PARA 10 note 3.

5 See the National Health Service Act 2006 s 7(1); and PARA 7. The Parliamentary Commissioner for Administration may not conduct an investigation in respect of any action taken on behalf of the Secretary of State by a strategic health authority, and for these purposes action taken by a strategic health authority in the exercise of functions of the Secretary of State is regarded as action taken on his behalf: see the Parliamentary Commissioner Act 1967 s 5, Sch 3 para 8 (amended by SI 2000/90; SI 2002/2469); and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq. As to investigation by the Health Service Commissioner for England see PARA 643.

6 See the National Health Service Act 2006 s 8(1), (2)(a); and PARA 16. A strategic health authority must make arrangements for ensuring that its functions are discharged having regard to the need to safeguard and promote the welfare of children, and any services provided by another person pursuant to arrangements made by the authority in the discharge of its functions are provided having regard to that need: see the Children Act 2004 s 11(1)(c), (2). In discharging this duty an authority must have regard to any guidance given to it for the purpose by the Secretary of State: s 11(4). See further **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 187. As to the meaning of 'person' see PARA 17 note 2.

7 See the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, regs 3-7; and PARAS 89-92. These regulations apply only in relation to strategic health authorities established for areas in England: reg 1(2). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, have effect as if made under the National Health Service Act 2006 s 7 (see PARA 7).

8 Is subject to the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(2), (4)-(6): see note 12 and the text to notes 17-22.

9 Is under any provision of the National Health Service Act 2006, the National Health Service and Community Care Act 1990 or the National Health Service Reform and Health Care Professions Act 2002.

10 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(1)(a).

11 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(1)(c). As to special health authorities see PARA 136.

12 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(1)(d)(i). A strategic health authority may not exercise jointly with a primary care trust the functions referred to in reg 9(5) (see the text to notes 19-20): reg 9(2). Subject to reg 9(4) (see the text to notes 17-18), reg 9(5) and to any directions which may be given by the Secretary of State with respect to its exercise, any function exercisable by a strategic health authority jointly with primary care trusts or other strategic health authorities or local health boards under reg 9(1)(d) may by arrangement with the health service bodies in question, and subject to such restrictions and conditions as the authority may think fit, be exercised on behalf of those bodies by a joint committee or joint sub-committee: reg 9(3). As to primary care trusts see PARA 111 et seq. As to joint committees or joint sub-committees see PARA 100.

13 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(1)(d)(ii). See also note 12.

14 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(1)(d)(iii) (substituted by SI 2003/1497). See also note 12. As to the meaning of 'local health board' see PARA 17 note 13.

15 As to the meaning of 'officer' see PARA 28 note 5. As to the appointment of officers see PARA 103.

16 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(1)(e). As to committees and sub-committees see PARA 100.

17 *Ie* under the Health Services and Public Health Act 1968 s 63(1): see PARA 20.

18 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(4) (amended by SI 2003/1497). In the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(4) and reg 9(5) (see the text to notes 19-20), any reference to an NHS trust is to be construed as a reference to an NHS trust whose hospitals, establishments and facilities are situated in either or both of England and Wales: reg 2(2)(c). As to the meaning of 'hospital' see PARA 12 note 4. As to the meaning of 'facilities' see PARA 12 note 7. As to NHS trusts see PARA 155 *et seq*.

19 *Ie* by virtue of the National Health Service Act 2006 s 258(1): see PARA 22.

20 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(5) (amended by SI 2003/1497); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to NHS trusts see also note 18.

21 *Ie* under the Nursing and Midwifery Order 2001, SI 2002/253, art 42 or 43 or Sch 2 para 18: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 709, 710.

22 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(6) (amended by SI 2003/1497).

23 *Ie* under the National Health Service (General Medical Services) Contracts Regulations 2004, SI 2004/291, Sch 3 (see PARA 246) or the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627 (see PARA 268).

24 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(6A) (added by SI 2004/865).

25 As to the meaning of 'appropriate strategic health authority' see PARA 89 note 40.

26 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 9(7).

27 The specified functions are any functions exercisable by a local health board under or by virtue of the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, the National Health Service and Community Care Act 1990, the National Health Service Reform and Health Care Professions Act 2002, the Health and Social Care (Community Health and Standards) Act 2003, or the Nursing and Midwifery Order 2001, SI 2002/253; National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 11(3) (amended by SI 2003/1497; SI 2004/865); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

28 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 11(1)(a) (reg 11(1) amended by SI 2003/1497).

29 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 11(1)(b) (as amended: see note 28).

30 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 11(1)(c) (as amended: see note 28).

31 See the National Health Service Act 2006 s 24(6)(b); and PARA 131.

- 32 See the National Health Service Act 2006 ss 66, 67; and PARA 79.
- 33 See the National Health Service Act 2006 s 68; and PARA 80.

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## **107. Directions.**

A strategic health authority<sup>1</sup> may, in relation to any specified<sup>2</sup> function<sup>3</sup> of the strategic health authority, direct a primary care trust<sup>4</sup> any part of whose area falls within the strategic health authority's area to exercise the function<sup>5</sup>. However, a strategic health authority may not so direct a primary care trust in relation to any functions of the strategic health authority arising under arrangements for the provision of primary medical services<sup>6</sup> or primary dental services<sup>7</sup> if the primary care trust is providing any services in accordance with those arrangements<sup>8</sup>.

The Secretary of State<sup>9</sup> may direct<sup>10</sup> strategic health authorities that specified functions of theirs: (1) are exercisable, or exercisable to (or only to) any specified extent, by primary care trusts<sup>11</sup>; or (2) are not exercisable by primary care trusts<sup>12</sup>; and that the authorities' power to give directions<sup>13</sup> must be exercised accordingly<sup>14</sup>.

1 As to the establishment and status of strategic health authorities see PARA 94.

2 'Specified' means specified in the directions: National Health Service Act 2006 s 15(6). Directions given by a strategic health authority must be given by instrument in writing: see s 273(3); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

3 As to the meaning of 'functions' see PARA 6 note 3. As to the functions of strategic health authorities see PARAS 105-106.

4 As to primary care trusts see PARA 111 et seq.

5 National Health Service Act 2006 s 15(1). Except in prescribed cases, directions under s 15 must not preclude a person or body by whom the function is exercisable apart from the directions from exercising the function: s 73(1)(d), (2). 'Prescribed' means prescribed by regulations: see s 275(1). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. As to the meaning of 'person' see PARA 17 note 2.

6 I.e. arrangements under the National Health Service Act 2006 s 92: see PARA 267.

7 I.e. arrangements under the National Health Service Act 2006 s 107: see PARA 288.

8 National Health Service Act 2006 s 15(2).

9 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

10 Such directions must be given by regulations or instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. See also note 5. The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, have been made: see PARAS 89-93, 106, 127.

11 National Health Service Act 2006 s 15(3)(a). Directions under s 15(3)(a) may include directions that any of the specified functions must be exercised (or exercised to, or only to, any specified extent) jointly with the strategic health authority, or jointly by two or more primary care trusts: s 15(4). But such directions may be given only if regulations providing for the joint exercise of those functions have been made under s 14 (see PARA 105) or s 19 (see PARA 126): s 15(5).

12 National Health Service Act 2006 s 15(3)(b).

13 I.e. the power in the National Health Service Act 2006 s 15(1): see the text to notes 1-5.

14 National Health Service Act 2006 s 15(3).



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**108. Advice.**

Each strategic health authority<sup>1</sup> must make arrangements with a view to securing that it receives advice appropriate for enabling it effectively to exercise the functions<sup>2</sup> exercisable by it from persons<sup>3</sup> with professional expertise relating to the physical or mental health of individuals<sup>4</sup>.

1 As to the establishment and status of strategic health authorities see PARA 94. As to the functions of strategic health authorities see PARAS 105, 106.

2 As to the meaning of 'functions' see PARA 6 note 3.

3 As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service Act 2006 s 17.

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### 109. Powers.

A strategic health authority<sup>1</sup> may pay subscriptions, of such amounts as the Secretary of State<sup>2</sup> may approve, to the funds of such bodies as he may approve<sup>3</sup>. A strategic health authority has power to accept gifts of property<sup>4</sup> (including property to be held on trust, either for the general or any specific purposes of the strategic health authority or for any purposes relating to the health service)<sup>5</sup>.

A strategic health authority may make available at a hospital<sup>6</sup> for which it has responsibility, accommodation or services for patients<sup>7</sup> who give undertakings (or for whom undertakings are given) to pay any charges imposed by the authority in respect of the accommodation or services<sup>8</sup>, and make and recover charges in respect of such accommodation or services and calculate them on any basis that it considers to be the appropriate commercial basis<sup>9</sup>. An authority may exercise this power only if it is satisfied that its exercise does not to any significant extent interfere with the performance by the authority of any function<sup>10</sup> conferred on it under the National Health Service Act 2006 to provide accommodation or services of any kind<sup>11</sup>, and does not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals<sup>12</sup> (whether as resident or non-resident patients) otherwise than under this provision<sup>13</sup>. An authority may allow accommodation or services which are made available<sup>14</sup> to be so made available in connection with treatment in pursuance of arrangements made by a medical practitioner<sup>15</sup> or dental practitioner<sup>16</sup> serving (whether in an honorary or paid capacity) on the staff of a health service hospital<sup>17</sup> for the treatment of private patients of that practitioner<sup>18</sup>.

1 As to the establishment and status of strategic health authorities see PARA 94. As to the functions of strategic health authorities see PARAS 105, 106.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 National Health Service Act 2006 Sch 2 para 11.

4 As to the meaning of 'property' see PARA 4 note 9.

5 National Health Service Act 2006 Sch 2 para 12. As to supplementary provision in respect of this provision see s 217; and PARA 71. As to trusts see PARA 104. As to the meaning of 'health service' see PARA 10 note 3. A defeasance clause in a trust instrument divesting a hospital of benefits under the trust in events such as amalgamation with, or absorption in, another institution, is not rendered ineffective by this provision, with the result that such a clause will preclude, in appropriate circumstances, the hospital from continuing to be entitled to benefit under the trust: *Re Bawden's Settlement, Besant v Board of Governors of the London Hospital* [1953] 2 All ER 1235, [1954] 1 WLR 33n. Cf *Re Hayes' Will Trusts, Dobie v National Hospital Board of Governors* [1953] 2 All ER 1242, [1954] 1 WLR 22, where there was a discretion to the trustees to divert the gift if impracticable or inequitable in consequence of amalgamation, and it was held that no amalgamation had occurred by virtue of the National Health Service Act 1946 so as to render it impracticable or inequitable that any hospital transferred to public ownership should benefit. Where a health service hospital is in need owing to the insufficiency of the public funds provided, it may benefit under a discretionary trust of funds bequeathed among such hospitals as are most in need: see *Re Perreyman, National Provincial Bank Ltd v Perreyman* [1953] 1 All ER 223.

6 As to the meaning of 'hospital' see PARA 12 note 4.

7 As to the meaning of 'patient' see PARA 15 note 6.



- 8 National Health Service Act 2006 Sch 2 para 15(1)(a). Before a strategic health authority decides to make accommodation or services so available, it must consult organisations representative of the interests of persons likely to be affected by the decision: Sch 2 para 15(3). As to the meaning of 'person' see PARA 17 note 2.
- 9 National Health Service Act 2006 Sch 2 para 15(1)(b). As to the recovery of charges see PARA 482.
- 10 As to the meaning of 'functions' see PARA 6 note 3.
- 11 National Health Service Act 2006 Sch 2 para 15(2)(a).
- 12 References in the National Health Service Act 2006 Sch 2 para 15 to a 'health service hospital' include references to such a hospital within the meaning of the National Health Service (Wales) Act 2006 s 206 (see PARA 21 note 7), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust: Sch 2 para 15(5). As to the meaning of 'health service hospital' generally see PARA 21 note 7. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174.
- 13 National Health Service Act 2006 Sch 2 para 15(2)(b).
- 14 Ie under the National Health Service Act 2006 Sch 2 para 15(1): see the text to notes 6-9.
- 15 As to the meaning of 'medical practitioner' see PARA 84 note 7.
- 16 As to the meaning of 'dental practitioner' see PARA 87 note 7.
- 17 National Health Service Act 2006 Sch 2 para 15(4)(a). As to the appointment of staff see PARA 103.
- 18 National Health Service Act 2006 Sch 2 para 15(4)(b). As to permission for the use of facilities in private practice see PARA 747.

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## **110. Reports on consultation.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

Each strategic health authority<sup>2</sup> must, at such times as the Secretary of State<sup>3</sup> may direct<sup>4</sup>, prepare a report on the consultation it has carried out, or proposes to carry out, before making commissioning decisions<sup>5</sup>, and on the influence that the results of consultation have on its commissioning decisions<sup>6</sup>. Each strategic health authority must also, at such times as the Secretary of State may direct, prepare a report on any relevant consultation<sup>7</sup> carried out by the authority<sup>8</sup>, and on the influence that the results of any relevant consultation have had on such matters as may be specified in the direction<sup>9</sup>.

The Secretary of State may give directions as to: (1) the periods to be covered by reports under these provisions<sup>10</sup>; (2) the matters to be dealt with by the reports<sup>11</sup>; (3) the form and content of the reports<sup>12</sup>; (4) the publication of the reports<sup>13</sup>; (5) decisions that are to be treated as being, or that are to be treated as not being, commissioning decisions<sup>14</sup>.

1 The National Health Service Act 2006 s 17A is added by the Local Government and Public Involvement in Health Act 2007 s 234(1) as from a day to be appointed: see s 245(5). At the date at which this volume states the law no such day had been appointed.

2 As to strategic health authorities see PARA 94.

3 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

4 Directions under the National Health Service Act 2006 s 17A must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

5 National Health Service Act 2006 s 17A(1)(a) (as added: see note 1). 'Commissioning decisions', in relation to a strategic health authority, means (subject to any directions under s 17A(5)(e): see the text to note 14) decisions as to the carrying out of functions exercisable by it for the purpose of securing, by arrangement with any person or body, the provision of services as part of the health service: s 17A(2) (as so added). As to the meaning of 'functions' see PARA 6 note 3. As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'health service' see PARA 10 note 3.

6 National Health Service Act 2006 s 17A(1)(b) (as added: see note 1).

7 'Relevant consultation' means consultation in relation to matters specified by the direction: National Health Service Act 2006 s 17A(4) (as added: see note 1).

8 National Health Service Act 2006 s 17A(3)(a) (as added: see note 1).

9 National Health Service Act 2006 s 17A(3)(b) (as added: see note 1).

10 National Health Service Act 2006 s 17A(5)(a) (as added: see note 1).

11 National Health Service Act 2006 s 17A(5)(b) (as added: see note 1).

12 National Health Service Act 2006 s 17A(5)(c) (as added: see note 1).

13 National Health Service Act 2006 s 17A(5)(d) (as added: see note 1).

14 National Health Service Act 2006 s 17A(5)(e) (as added: see note 1).

## **UPDATE**

## **110 Reports on consultation**

TEXT AND NOTE 1--Appointed day is 3 November 2008: SI 2008/2434.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(3) HEALTH SERVICE BODIES/(iii) Primary Care Trusts/A. STATUS AND MEMBERSHIP/111. Establishment and status.

### **(iii) Primary Care Trusts**

#### **A. STATUS AND MEMBERSHIP**

##### **111. Establishment and status.**

Each primary care trust is a body corporate<sup>1</sup>. The primary care trusts established by the Secretary of State<sup>2</sup> continue in existence<sup>3</sup>, but the Secretary of State may by order (known as a 'PCT order'<sup>4</sup>): (1) vary the area in England for which a primary care trust is established<sup>5</sup>; (2) abolish a primary care trust<sup>6</sup>; (3) establish a new primary care trust for the area in England specified in the order with a view to it exercising functions<sup>7</sup> in relation to the health service<sup>8</sup>. The Secretary of State must act so as to ensure that the areas for which primary care trusts are at any time established together comprise the whole of England<sup>9</sup>.

A PCT order must specify the name of the primary care trust<sup>10</sup> and the operational date of the primary care trust<sup>11</sup>. A primary care trust must exercise its functions in accordance with any prohibitions or restrictions in a PCT order relating to it<sup>12</sup>.

A primary care trust is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>13</sup>; and a primary care trust's property<sup>14</sup> must not be regarded as property of, or property held on behalf of, the Crown<sup>15</sup>.

1 National Health Service Act 2006 Sch 3 para 1. As to the membership of primary care trusts see PARAS 112-118. As to meetings and proceedings of trusts see PARAS 119, 120. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**. A primary care trust is a public authority for the purposes of the Freedom of Information Act 2000: see s 3, Sch 1 Pt III (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(d)): and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 National Health Service Act 2006 s 18(1). Primary care trusts were originally established by order of the Secretary of State under the National Health Service Act 1977 s 16A (repealed). Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 Any such order must be made by statutory instrument: see the National Health Service Act 2006 s 272(2). If any consultation requirements apply, they must be complied with before a PCT order is made: s 18(5). 'Consultation requirements' means requirements about consultation contained in regulations: s 18(6). Regulations must impose requirements about consultation where a PCT order establishes a primary care trust: s 18(7). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of orders and regulations generally see PARA 9. As to the consultation requirements see the Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999, SI 1999/2337, which by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) have effect under the National Health Service Act 2006 s 18(5), (6). Orders which relate to individual primary care trusts are not recorded in this work.

5 National Health Service Act 2006 s 18(2)(a).

6 National Health Service Act 2006 s 18(2)(b). As to the dissolution of primary care trusts see PARA 124.

7 As to the meaning of 'functions' see PARA 6 note 3.

8 National Health Service Act 2006 s 18(2)(c). As to the meaning of 'health service' see PARA 10 note 3.

9 National Health Service Act 2006 s 18(3).

10 National Health Service Act 2006 Sch 3 para 13(1)(a).

11 National Health Service Act 2006 Sch 3 para 13(1)(b). The 'operational date' of a primary care trust is the date on which functions exercisable by it may be undertaken fully by the trust: Sch 3 para 13(2). A PCT order may provide for the establishment of a primary care trust with effect from a date earlier than the operational date: Sch 3 para 14(1). During the period beginning with that earlier date and ending with the day immediately preceding the operational date (known as the 'preparatory period'), the exercise of any functions by the primary care trust must be limited to such exercise as may be specified in the PCT order for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date: Sch 3 para 14(2). A PCT order may require a strategic health authority whose area includes any part of the area of a primary care trust to meet costs of the trust performing its functions during the preparatory period by doing either or both of the following: (1) discharging such liabilities of the trust as may be incurred during the preparatory period and are of a description specified in the order (Sch 3 para 14(3)(a)); (2) paying the trust sums to enable it to meet (or to contribute towards its meeting) expenditure of a description specified in the order (Sch 3 para 14(3)(b)). A PCT order may require an NHS trust, or a strategic health authority whose area includes any part of the area of a primary care trust, to make available to the trust during the preparatory period premises and other facilities of the NHS trust or authority, staff of the NHS trust, or officers of the authority: Sch 3 para 14(4). As to strategic health authorities see PARA 94 et seq. As to NHS trusts see PARA 155. As to the meaning of 'facilities' see PARA 12 note 7. As to the meaning of 'officer' see PARA 28 note 5.

12 National Health Service Act 2006 s 18(4). As to the exercise of functions by a primary care trust generally see PARA 127.

13 National Health Service Act 2006 Sch 3 para 2(1). As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

14 As to the meaning of 'property' see PARA 4 note 9.

15 National Health Service Act 2006 Sch 3 para 2(2).

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## **112. Membership.**

The members of a primary care trust<sup>1</sup> are: (1) a chairman appointed by the Secretary of State<sup>2</sup>; (2) officers<sup>3</sup> of the trust<sup>4</sup>; and (3) a number of persons who are not officers of the trust<sup>5</sup>. Regulations<sup>6</sup> may make provision about:

- 57 (a) the appointment of the chairman and other members of a primary care trust (including any conditions to be fulfilled for appointment)<sup>7</sup>;
- 58 (b) the tenure of office of the chairman and other members of a primary care trust (including the circumstances in which they cease to hold office or may be removed or suspended from office)<sup>8</sup>;
- 59 (c) how many persons may be appointed as members of a primary care trust and how many of those members may be officers (a minimum and maximum number may be specified for both purposes)<sup>9</sup>;
- 60 (d) the appointment and constitution of any committees<sup>10</sup> of a primary care trust (which may include or consist of persons who are not members of the trust)<sup>11</sup>;
- 61 (e) the appointment and tenure of office of the members of any committees of a primary care trust<sup>12</sup>;
- 62 (f) the procedure to be followed by a primary care trust, and by any committee of the trust, in the exercise of its functions<sup>13</sup>;
- 63 (g) the circumstances in which a person who is not an officer of the primary care trust must be treated as if he were such an officer<sup>14</sup>.

Any regulations may, in particular, make provision to deal with cases where the post of any officer of a primary care trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person<sup>15</sup>.

1 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 National Health Service Act 2006 Sch 3 para 3(a). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation to the Appointments Commission of the power of appointment of the chairman and members of a primary care trust see the Health Act 2006 s 58; and PARA 820. The chairman or any member, not also being an employee, of a primary care trust is disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1), Sch 1 Pt III (amended by SI 2000/90; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 52, 54(b)); and **PARLIAMENT** vol 78 (2010) PARA 905.

3 As to the meaning of 'officer' see PARA 28 note 5. As to the appointment of staff see PARA 122.

4 National Health Service Act 2006 Sch 3 para 3(b).

5 National Health Service Act 2006 Sch 3 para 3(c). As to the remuneration of members see PARA 121. As to the protection from liability of members of primary care trusts see PARA 82.

6 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89 (see PARAS 113-120) have effect under the National Health Service Act 2006 Sch 3 para 4.

7 National Health Service Act 2006 Sch 3 para 4(1)(a).

8 National Health Service Act 2006 Sch 3 para 4(1)(b).

9 National Health Service Act 2006 Sch 3 para 4(1)(c). The power to make provision under Sch 3 para 4(1)(c) includes power to make regulations about the number of persons who may be appointed and the procedure to be followed during the preparatory period: Sch 3 para 4(2). As to the meaning of the 'preparatory period' see PARA 111 note 11.

10 Any reference in the National Health Service Act 2006 Sch 3 to a committee of a primary care trust includes a reference to sub-committees of, and joint committees and joint sub-committees including, the primary care trust: Sch 3 para 5.

11 National Health Service Act 2006 Sch 3 para 4(1)(d).

12 National Health Service Act 2006 Sch 3 para 4(1)(e).

13 National Health Service Act 2006 Sch 3 para 4(1)(f). The power to make provision under Sch 3 para 4(1)(f) includes power to make regulations about the number of persons who may be appointed and the procedure to be followed during the preparatory period: Sch 3 para 4(2). As to the meaning of 'functions' see PARA 6 note 3.

14 National Health Service Act 2006 Sch 3 para 4(1)(g).

15 National Health Service Act 2006 Sch 3 para 4(3).

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### **113. Appointment of members.**

A primary care trust<sup>1</sup> must have not more than 14 members<sup>2</sup> and not less than ten members<sup>3</sup>. The number of officer members<sup>4</sup> must not exceed seven and nor must it exceed the number of non-officer members<sup>5</sup>. The non-officer members are appointed by the Secretary of State<sup>6</sup>.

The officer members must include: (1) the persons who for the time being hold the offices of chief executive, director of finance and director of public health<sup>7</sup>; (2) the person who for the time being holds the post of chairman of the executive committee<sup>8</sup>; (3) at least one person appointed by the chairman following nomination by the executive committee<sup>9</sup>; and (4) in the case of a care trust, at least one person, appointed by the chairman and non-officer members, who has experience of the health-related functions of local authorities<sup>10</sup>. Of the persons who are the chairman or members of the executive committee and who are members of the trust by virtue of heads (2) and (3) above at least one must be a medical practitioner<sup>11</sup>, and at least one must be a nurse<sup>12</sup>. In addition to the persons referred to in heads (1) to (4) above, the officer members may include officers of the trust, other than the chief executive, the director of finance and the director of public health, appointed by the chairman and non-officer members of that trust<sup>13</sup>.

Subject to the provisions relating to tenure of office<sup>14</sup>, the chairman or a non-officer member must be appointed for such period, not exceeding four years, as the Secretary of State may specify on making the appointment and is eligible for reappointment<sup>15</sup>.

During its preparatory period<sup>16</sup> a primary care trust must be regarded as properly constituted if the chairman and at least one non-officer member have been appointed, notwithstanding that the other members have not yet been appointed<sup>17</sup>.

1 'Primary care trust' includes a care trust; and 'care trust' means a primary care trust designated as a care trust pursuant to the National Health Service Act 2006 s 77(1) (see PARA 235): Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2) (definitions added by SI 2001/3787); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). By virtue of Sch 2 Pt 1 para 1(1), (2), the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, have effect under the National Health Service Act 2006 s 18(8), Sch 3 para 4: see PARA 112. As to the establishment and status of primary care trusts see PARA 111. As to the membership of primary care trusts see PARA 112. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 'Member', in relation to a primary care trust, does not include its chairman, and 'members' and 'membership' are construed accordingly: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2). As to the chairman see PARA 112.

3 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(1) (amended by SI 2002/557). This provision is expressed to be subject to the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4B(2): see PARA 115. As to termination of office of members see PARAS 114, 115. As to disqualification for appointment see PARA 116.

4 'Officer member' means a member of a primary care trust who is either an officer of the trust or is to be treated as an officer: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2). For these purposes, the chairman of a primary care trust's executive committee and any persons nominated by such a committee in accordance with reg 2(4)(c) (see the text to note 9), if they are not officers of the trust, must be treated as if they were such officers: reg 1(3). As to the



executive committee see PARA 118. As to the meaning of 'officer' see PARA 28 note 5. As to the appointment of officers see PARA 122.

5 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(2). 'Non-officer member' means a member of a primary care trust who is not an officer of the trust and is not to be treated as an officer by virtue of reg 1(3) (see note 4): reg 1(2).

6 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(3) (reg 2(3) amended, 2(3A) added, by SI 2001/3787). The non-officer members of a care trust must include at least one member of each relevant local authority, appointed by the Secretary of State following nomination by that authority: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(3A) (as so added). 'Relevant local authority' means a local authority which is a party to LA delegation arrangements (see PARA 235) with the primary care trust: reg 1(2) (definition added by SI 2001/3787). As to the meaning of 'local authority' see PARA 17 note 3. As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the power of appointment of the chairman and members of a primary care trust see the Health Act 2006 s 58; and PARA 820.

7 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(a) (amended by SI 2002/557). Where more than one person is appointed jointly to a post mentioned in the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(a) or in relation to which an officer member is to be appointed under reg 2(7) (see the text to note 13), those persons must become or be appointed as an officer member jointly, and count as one officer member for the purposes of reg 2(1) and (2) (see the text to notes 1-5): reg 2(8).

8 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(b).

9 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(c) (reg 2(4)(c) amended, 2(4)(d) added, by SI 2001/3787). Where only one person is appointed under the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(c), that person must be a member of the executive committee; and where more than one person is so appointed, at least two must be members of that committee: reg 2(5). Subject to reg 3 (see PARA 114), an officer member appointed under reg 2(4)(c) or (7) (see the text to note 13) must be appointed for such period: (1) not exceeding four years (reg 2(9)(a)); and (2) in the case of an officer member who is also a member of the executive committee, not exceeding the remainder of his term of office as a member of that committee (reg 2(9)(b)), as the chairman or the chairman and non-officer members, as the case may be, may specify on making the appointment, and is eligible for reappointment (reg 2(9)).

10 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(d) (as added: see note 9).

11 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(6)(a). 'Medical practitioner' means, except in reg 5(1)(da)(iii) (see PARA 116) a medical practitioner who is providing or performing primary medical services under the National Health Service Act 2006: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2) (definition substituted by SI 2004/865); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to the meaning of 'medical practitioner' generally see PARA 84 note 7. As to primary medical services see PARA 241.

12 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(6)(b). 'Nurse' means a registered nurse or registered midwife who: (1) is a party to a general dental services contract under the National Health Service Act 2006 s 100 (see PARA 278) or to a PDS agreement; (2) is employed by a provider of primary dental services under the National Health Service Act 2006 to assist in the provision of those services; (3) is a party to a general medical services contract under s 84 (see PARA 242) or to a PMS agreement; (4) is employed by a provider of primary medical services under the National Health Service Act 2006 to assist in the provision of those services; or (5) is employed by a strategic health authority, a local health board, a primary care trust, an NHS trust or an NHS foundation trust to provide or assist in the provision of community health services: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2) (definition amended by SI 2002/2469; SI 2003/1616; SI 2004/696; SI 2004/865; SI 2004/1771; SI 2006/562); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to the registration of nurses and midwives see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 716 et seq. 'PDS agreement' means an agreement made under the National Health Service Act 2006 s 107 (see PARA 288) for the provision of primary dental services: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2) (definition added by SI 2006/562); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). 'PMS agreement' means an agreement for the provision of primary medical services made under the National Health Service Act 2006 s 92 (see PARA 267): Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2) (definition added by SI 2004/865; and amended by SI 2006/562);

National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to strategic health authorities see PARA 94 et seq. As to the meaning of 'local health board' see PARA 17 note 13. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. 'Community health services' means any services which the Secretary of State may provide under the National Health Service Act 2006 s 3(1)(d) or (e) (see PARA 12), or Sch 1 paras 1-7 (see PARA 33); Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

13 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(7) (amended by SI 2002/557). See also notes 7 and 9.

14 le subject to the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4: see PARA 115.

15 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(10) (reg 2(10) amended, 2(10A) added, by SI 2001/3787). However, a non-officer member mentioned in the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(3A) (see note 6) must not be appointed for a period exceeding his remaining term of office as a member of the local authority: reg 2(10A) (as so added).

16 As to the meaning of the 'preparatory period' see PARA 111 note 11.

17 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(11).

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#### **114. Termination of tenure of office and suspension of officer members.**

A person who is an officer member<sup>1</sup> of a primary care trust<sup>2</sup> by virtue<sup>3</sup> of holding certain offices, of being another officer, or being the chairman of the executive committee, ceases to hold office as a member if he ceases to hold the post or office in the trust by virtue of which he became an officer member<sup>4</sup>. A person who is an officer member by virtue<sup>5</sup> of being the chairman of the executive committee, or being appointed following nomination by that committee, ceases to hold office as a member if, being a member of the committee, he ceases to be such a member<sup>6</sup>.

If the chairman<sup>7</sup> and non-officer members<sup>8</sup> are of the opinion that it is not in the interests of the trust that a person who is an officer member by virtue<sup>9</sup> of being appointed following nomination by the executive committee, or, in the case of a care trust<sup>10</sup>, having certain experience, should continue to hold office as such a member, they may with the consent of the Secretary of State<sup>11</sup> forthwith terminate his tenure of office<sup>12</sup>. If the executive committee of a primary care trust notifies the chairman of the trust that it is of the opinion that a person who is such an officer member should not continue to hold office as such a member, the chairman and non-officer members of the trust may terminate his tenure of office if they are of the opinion that it is not in the interests of the trust for him to continue to hold office<sup>13</sup>. If the chairman and non-officer members are of the opinion that it is appropriate to do so in order to ensure compliance with the provisions relating to the appointment of members<sup>14</sup>, they may, following such period of notice as appears to them to be reasonable, terminate the tenure of office of a person who is an officer member by virtue<sup>15</sup> of being appointed following nomination by the executive committee, or being an officer other than the holder of certain designated posts<sup>16</sup>. If the chairman and non-officer members are of the opinion that it is not in the interests of the trust that a person who is an officer member by virtue<sup>17</sup> of being an officer other than the holder of certain designated posts should continue to hold office as such a member, they may forthwith terminate his tenure of office<sup>18</sup>.

If a person who is an officer member by virtue<sup>19</sup> of being appointed following nomination by the executive committee, or, in the case of a care trust, having certain experience, has failed to attend a meeting of the trust for a period of three months<sup>20</sup>, the chairman and non-officer members must forthwith terminate the tenure of office of that officer member unless they are satisfied that the absence was due to a reasonable cause<sup>21</sup>, and the member will be able to attend meetings of that trust within such period as the chairman and non-officer members consider reasonable<sup>22</sup>.

If an officer member of a primary care trust is suspended from his post in the trust or from his membership of the executive committee he must be suspended from performing his functions as a member for the period of his suspension<sup>23</sup>.

In the case of a care trust a member's tenure of office must not be terminated under these provisions unless each relevant local authority has been consulted<sup>24</sup>.

1 As to the meaning of 'officer member' see PARA 113 note 4.

2 As to the meaning of 'primary care trust' see PARA 113 note 1. As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 le by virtue of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(a) or (b) or (7): see PARA 113. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, have effect under the National Health Service Act 2006 s 18(8), Sch 3 para 4: see PARA 112.

4 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(1). As to the executive committee see PARA 118.

5 le by virtue of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(b) or (c): see PARA 113.

6 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(2).

7 As to the chairman see PARA 112.

8 As to the meaning of 'non-officer member' see PARA 113 note 5.

9 le by virtue of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(c) or (d): see PARA 113.

10 As to the meaning of 'care trust' see PARA 113 note 1.

11 As to the Secretary of State see PARA 6 note 8.

12 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(3) (reg 3(3)-(5), (6), (7) amended by SI 2001/3787).

This provision is expressed to be subject to the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(9): see the text to note 24.

13 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(4) (as amended: see note 12).

This provision is expressed to be subject to reg 3(9): see the text to note 24.

Where under reg 3(4) the chairman and non-officer members terminate the tenure of office of an officer member or determine that such a member should continue to hold office, they must forthwith notify the Secretary of State in writing, stating the reasons for their decision and, in the case of a care trust, must also so notify each relevant local authority: reg 3(5) (as so amended). As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'relevant local authority' see PARA 113 note 6.

14 le with the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2: see PARA 113.

15 le by virtue of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(c) or (7): see PARA 113.

16 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(5A) (added by SI 2002/557).

This provision is expressed to be subject to the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(9): see the text to note 24.

17 le by virtue of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(7): see PARA 113.

18 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(7) (as amended: see note 12).

This provision is expressed to be subject to reg 3(9): see the text to note 24.

19 le by virtue of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(4)(c) or (d): see PARA 113.

20 As to the meaning of 'month' see PARA 28 note 16.

21 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(6)(a) (as amended: see note 12).

22 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(6)(b) (as amended: see note 12).

Regulation 3(6) is expressed to be subject to reg 3(9): see the text to note 24.

23 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(8).

24 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 3(9) (added by SI 2001/3787).

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### **115. Termination of tenure of office: chairman and non-officer members.**

The chairman<sup>1</sup> or a non-officer member<sup>2</sup> of a primary care trust<sup>3</sup> may resign his office at any time during the period for which he was appointed by giving notice in writing<sup>4</sup> to the Secretary of State<sup>5</sup>. Where during his period of membership a non-officer member of a trust is appointed to be the chairman of the trust, his tenure of office as a member<sup>6</sup> terminates when his appointment as chairman takes effect<sup>7</sup>.

If the Secretary of State is of the opinion that it is not in the interests of the health service<sup>8</sup> in the area for which a trust acts<sup>9</sup>, or it is not conducive to the good management of a trust<sup>10</sup>, for a person whom he has appointed as the chairman or a non-officer member of that trust to continue to hold that office, the Secretary of State may forthwith terminate his tenure of office<sup>11</sup>. If the Secretary of State is of the opinion that it is appropriate to do so in connection with the designation of a trust as a care trust, he may, following such period of notice as appears to him to be reasonable, terminate the tenure of office of the chairman or a non-officer member of the trust<sup>12</sup>. If the Secretary of State is of the opinion that it is appropriate to do so in order to ensure compliance with the provisions relating to membership<sup>13</sup>, he may, following such period of notice as appears to him to be reasonable, terminate the tenure of office of a non-officer member of the trust<sup>14</sup>.

If the chairman or a non-officer member of a trust has failed to attend a meeting of that trust for a period of three months<sup>15</sup>, the Secretary of State must forthwith terminate the tenure of office of the chairman or that member unless he is satisfied that<sup>16</sup> the absence was due to a reasonable cause<sup>17</sup>, and the chairman or member will be able to attend meetings of that trust within such period as the Secretary of State considers reasonable<sup>18</sup>. Where a person has been appointed to be the chairman or a non-officer member of a trust, if it comes to the notice of the Secretary of State that the person has become disqualified for appointment<sup>19</sup>, the Secretary of State must forthwith notify him in writing of such disqualification<sup>20</sup>; or if it comes to the notice of the Secretary of State that at the time of his appointment the person was so disqualified, the Secretary of State must forthwith declare that he was not duly appointed and so notify him in writing<sup>21</sup>; and, upon receipt of any such notification, his tenure of office, if any, is terminated and he must cease to act as such chairman or member<sup>22</sup>. If it appears to the Secretary of State that the chairman or a non-officer member of a trust has failed to comply with the obligation to declare a pecuniary interest<sup>23</sup> he may forthwith terminate that person's tenure of office<sup>24</sup>.

Where a relevant local authority notifies the Secretary of State in writing that it no longer wishes a relevant member<sup>25</sup> to continue as a member of the trust the Secretary of State must forthwith terminate the tenure of office of that member<sup>26</sup>. If the chairman or a non-officer member of a care trust who is a member of a local authority is suspended from being a member of that authority<sup>27</sup> he is suspended from performing his functions as a member of the care trust for the period of the suspension<sup>28</sup>.

The Secretary of State may suspend an appointee<sup>29</sup> from office while he considers whether to remove<sup>30</sup> the person from office<sup>31</sup>, or the person has become disqualified for appointment<sup>32</sup> or was so disqualified at the time of appointment<sup>33</sup>. A period of suspension must not exceed six months<sup>34</sup>, but the Secretary of State may at any time review a suspension and must review a suspension after three months if so requested in writing by the person who has been suspended<sup>35</sup>. In relation to any primary care trust in which the chairman of the trust is so suspended<sup>36</sup>, if a vice-chairman has been appointed<sup>37</sup> that appointment ceases to have effect from the time that the chairman is suspended<sup>38</sup>. The Secretary of State may, for the purpose of

enabling the proceedings of the trust<sup>39</sup> to be conducted in the absence of the chairman, appoint a non-officer member of the trust to be vice-chairman<sup>40</sup>. When the period for which a person is appointed as vice-chairman expires, the Secretary of State may re-appoint the person, or appoint another non-officer member, as vice-chairman<sup>41</sup>. Any person appointed under these provisions may at any time resign from the office of vice-chairman by giving notice in writing to the Secretary of State<sup>42</sup>. The Secretary of State may terminate a person's appointment as vice-chairman if the Secretary of State is of the opinion that it would be in the best interests of the trust for another non-officer member of the trust to be vice-chairman<sup>43</sup>.

1 As to the chairman see PARA 112.

2 As to the meaning of 'non-officer member' see PARA 113 note 5.

3 As to the meaning of 'primary care trust' see PARA 113 note 1. As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 As to the meaning of 'writing' see PARA 7 note 2.

5 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(1). The date on which a resignation by such notice takes effect is, where a date is specified in the notice as being that on which the resignation is to take effect, that date (reg 4(2)(a)); and in any other case, the date on which the notice is received by the Secretary of State (reg 4(2)(b)). As to the Secretary of State see PARA 6 note 8. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, have effect under the National Health Service Act 2006 s 18(8), Sch 3 para 4: see PARA 112.

6 As to the meaning of 'member' see PARA 113 note 2.

7 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(3).

8 As to the meaning of 'health service' see PARA 10 note 3.

9 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(4)(a).

10 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(4)(b).

11 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(4) (reg 4(4), (5), (7) amended by SI 2001/3787). In the case of a care trust, a non-officer member's tenure of office must not be terminated under this provision unless each relevant local authority has been consulted: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(10) (added by SI 2001/3787; and amended by SI 2002/557). As to the meaning of 'care trust' see PARA 113 note 1. As to the meaning of 'relevant local authority' see PARA 113 note 6.

12 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(4A) (reg 4(4A), (4B) added by SI 2002/557).

13 In line with the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2: see PARA 113.

14 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(4B) (as added: see note 12). In the case of a care trust, a non-officer member's tenure of office must not be terminated under this provision unless each relevant local authority has been consulted: reg 4(10) (as added and amended: see note 11).

15 As to the meaning of 'month' see PARA 28 note 16.

16 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(5) (as amended: see note 11). In the case of a care trust, a non-officer member's tenure of office must not be terminated under this provision unless each relevant local authority has been consulted: reg 4(10) (as added and amended: see note 11).

17 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(5)(a).

18 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(5)(b).

19 *Ie* under the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5: see **PARA** 116.

20 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(6)(a).

21 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(6)(b).

22 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(6).

23 *Ie* with the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 11(1): see **PARA** 120.

24 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(7) (as amended: see note 11). In the case of a care trust, a non-officer member's tenure of office must not be terminated under this provision unless each relevant local authority has been consulted: reg 4(10) (as added and amended: see note 11).

25 'Relevant member' means a non-officer member nominated by the authority in accordance with the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 2(3A) (see **PARA** 113): reg 4(9) (reg 4(8), (9), (11) added by SI 2001/3787).

26 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(8) (as added: see note 25).

27 *Ie* by virtue of a decision of a case tribunal made under the Local Government Act 2000 s 79: see **LOCAL GOVERNMENT** vol 69 (2009) **PARA** 283.

28 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(11) (as added: see note 25).

29 'Appointee' in relation to a primary care trust means the chairman or a non-officer member of the trust: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2) (definition added by SI 2008/1269).

30 *Ie* under the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4(4) (see the text to notes 8-11) or 4(7) (see the text to notes 23-24).

31 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4A(1)(a) (regs 4A-4C added by SI 2008/1269). Regulations 4A-4C come into force on 16 June 2008: see the Primary Care Trusts and National Health Service Trusts (Membership and Procedure) Amendment Regulations 2008, SI 2008/1269, reg 1(1).

32 *Ie* under the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5: see **PARA** 116.

33 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4A(1)(b) (as added: see note 31). The Secretary of State must notify a person suspended under reg 4A(1) of the decision to suspend the person from office, and the decision takes effect upon receipt of such notification: reg 4A(2) (as so added). In relation to any primary care trust in which an appointee of the trust is suspended under reg 4A: (1) the reference in reg 2(1) (see **PARA** 113) to the maximum number of members that a trust is to have has effect in respect of that trust as if the number were increased by the number of appointees so suspended (reg 4B(1), (2) (reg 4B as so added)); (2) references in Sch 2 para 2(2) and (3) (see **PARA** 119) to members means members other than any member who is suspended under reg 4A; and the reference in Sch 2 para 6(a) (see **PARA** 119) to the whole membership means the whole membership other than any appointee who is suspended under reg 4A (reg 4B(3) (as so added)).

34 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4A(3) (as added: see note 31).



35 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4A(4) (as added: see note 31). On reviewing a suspension, the Secretary of State may revoke the suspension, in which case it ceases to have effect, or suspend the person from office for a period of not more than six months from the expiry of the current period of suspension: reg 4A(5) (as so added).

36 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4C(1) (as added: see note 31).

37 le under the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 7: see PARA 117.

38 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4C(2) (as added: see note 31).

39 As to proceedings see PARA 119.

40 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4C(3) (as added: see note 31). The appointment of a vice-chairman must be for such a period, not exceeding the shorter of the period (1) for which the chairman is suspended, and (2) the remainder of the non-officer member's term as a member of the trust, as the Secretary of State may specify on making the appointment: reg 4C(4) (as so added).

41 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4C(5) (as added: see note 31).

42 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4C(6) (as added: see note 31). If a person so resigns from the office of vice-chairman the Secretary of State may appoint another non-officer member as vice-chairman: reg 4C(8)(a) (as so added).

43 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 4C(7) (as added: see note 31). If the Secretary of State terminates a person's appointment as vice-chairman under reg 4C(7), the Secretary of State may appoint another non-officer member as vice-chairman: reg 4C(8)(b) (as so added).

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# **116. Disqualification for appointment: chairman and non-officer members.**

A person is disqualified for appointment as the chairman<sup>1</sup> or a non-officer member<sup>2</sup> of a primary care trust<sup>3</sup> if:

- 64 (1) he has within the preceding five years been convicted in the United Kingdom<sup>4</sup> of any offence, or convicted elsewhere for an offence which, if committed in any part of the United Kingdom would constitute a criminal offence in that part, and in either case has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine, and which has not been quashed on appeal<sup>5</sup>;
- 65 (2) he is the subject of a bankruptcy restrictions order or an interim order<sup>6</sup>;
- 66 (3) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body<sup>7</sup>, or if the trust is a care trust<sup>8</sup>, with a local authority<sup>9</sup>;
- 67 (4) subject to head (5) below, he is a person whose tenure of office as the chairman or as a member or director or governor of a health service body has been terminated<sup>10</sup>: (a) because it was not in the interests of the health service or of the body<sup>11</sup>, or conducive to the good management of the body<sup>12</sup>, that he should continue to hold office<sup>13</sup>; (b) for non-attendance at meetings of the body<sup>14</sup>; or (c) for non-disclosure of a pecuniary interest in a matter which is the subject of consideration at a meeting of the body, for taking part in the consideration or discussion of that matter or for voting on any question with respect to that matter<sup>15</sup>;
- 68 (5) he is a person whose tenure of office as the chairman or as a member of the Commission for Healthcare Audit and Inspection has been terminated because the Secretary of State<sup>16</sup> was satisfied that one of the specified conditions<sup>17</sup> was satisfied in relation to him<sup>18</sup>;
- 69 (6) he:
  - 1 (a) is subject to a national disqualification imposed by the Family Health Services Appeal Authority<sup>19</sup>;
  - 2 (b) is subject to a national disqualification under a decision<sup>20</sup> of the National Health Service Tribunal<sup>21</sup>;
  - 3 (c) has been refused nomination or approval to fill a vacancy for a medical practitioner<sup>22</sup> or has been refused admission to a primary care list<sup>23</sup> and has not subsequently been approved or included in a primary care list<sup>24</sup>;
  - 4 (d) is conditionally included in a primary care list<sup>25</sup>;
  - 5 (e) has been removed from a primary care list<sup>26</sup> and has not subsequently been included in such a list<sup>27</sup>;
  - 6 (f) is contingently removed from a primary care list<sup>28</sup>; or
  - 7 (g) is suspended from a primary care list or is treated<sup>29</sup> as so suspended<sup>30</sup>;
- 2 (7) he is a chairman or member of another primary care trust or the executive committee of such a trust<sup>31</sup>, or a strategic health authority, a local health board or, with certain exceptions<sup>32</sup>, a special health authority<sup>33</sup>;
- 71 (8) he is a chairman or director of an NHS trust<sup>34</sup>;
- 72 (9) he is a chairman or non-executive director of an NHS foundation trust<sup>35</sup>;

- 73 (10) he is a health care professional<sup>36</sup>: (a) providing, or assisting in the provision of, primary medical services, primary dental services, general ophthalmic services, pharmaceutical services, or community health services<sup>37</sup>; (b) providing, or assisting in the provision of, local pharmaceutical services<sup>38</sup>;
- 74 (11) he is a person employed by a health care professional referred to in head (10) above for the purpose of assisting in the provision or performance of the services referred to in that head<sup>39</sup>;
- 75 (12) he holds any paid appointment or office with another primary care trust, a strategic health authority, a local health board, a special health authority, an NHS trust, an NHS foundation trust or a contractor which is treated<sup>40</sup> as a health service body<sup>41</sup>;
- 76 (13) in the case of a care trust, he is employed by a local authority<sup>42</sup>;
- 77 (14) he is the chairman or another member of the Independent Regulator of NHS Foundation Trusts<sup>43</sup>.

A person is not disqualified by head (7) or head (8) above from being the chairman or a non-officer member of a primary care trust during the trust's preparatory period<sup>44</sup> by virtue of being the chairman or a non-officer member of another trust, another trust's executive committee, or a strategic health authority or local health board<sup>45</sup>, or the chairman or a non-executive director of an NHS trust or NHS foundation trust<sup>46</sup>.

Where a person is disqualified under head (3) above he may, after the expiry of the period of two years beginning with the date on which he was dismissed, apply in writing<sup>47</sup> to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification cease<sup>48</sup>. Where a person is disqualified under head (4) above, the disqualification ceases on the expiry of the period of two years beginning with the date of the termination of his tenure of office or such longer period as the Secretary of State specifies when terminating his period of office, but the Secretary of State may, on application being made to him by that person, reduce the period of disqualification<sup>49</sup>.

1 As to the chairman see PARA 112.

2 As to the meaning of 'non-officer member' see PARA 113 note 5.

3 As to the meaning of 'primary care trust' see PARA 113 note 1. As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 As to the meaning of 'United Kingdom' see PARA 15 note 8.

5 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(a) (amended by SI 2003/1616). For these purposes the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(2).

6 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(b) (substituted by SI 2006/1722). As to bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

7 'Health service body' means a strategic health authority; a special health authority; a primary care trust; a local health board; an NHS trust; an NHS foundation trust; a contractor which is treated as a health service body pursuant to the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10 (see PARA 437); the Commission for Healthcare Audit and Inspection; the Independent Regulator of NHS Foundation Trusts; or the Health Protection Agency: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2) (definition amended by SI 2002/2469; SI 2003/1616; SI 2004/664; SI 2004/696; SI 2005/525; SI 2005/1622; SI 2006/552; SI 2006/562). As to strategic health authorities see PARA 94 et seq. As to special health authorities see PARA 136. As to the meaning of 'local

health board' see PARA 17 note 13. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to the Commission for Healthcare Audit and Inspection see PARA 552 et seq. As to the Independent Regulator of NHS Foundation Trusts see PARA 188 et seq. As to the Health Protection Agency see PARA 213.

8 As to the meaning of 'care trust' see PARA 113 note 1.

9 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(c) (amended by SI 2001/3787). For these purposes a person is not treated as having been in paid employment by reason only of his chairmanship, membership or directorship of or, in the case of an NHS foundation trust his chairmanship, governorship or non-executive directorship of, the health service body in question: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(3) (amended by SI 2004/696). As to the meaning of 'local authority' see PARA 17 note 3. As to redundancy see **EMPLOYMENT** vol 40 (2009) PARA 790 et seq.

10 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(d) (amended by SI 2004/664).

11 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(d)(i)(a). As to the meaning of 'health service' see PARA 10 note 3.

12 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(d)(i)(b).

13 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(d)(i).

14 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(d)(ii).

15 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(d)(iii).

16 As to the Secretary of State see PARA 6 note 8.

17 I.e the conditions specified in the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(6)(a) or (b): see PARA 553.

18 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(dza) (added by SI 2004/664).

19 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(da)(i) (reg 5(1)(da) added by SI 2003/1616). As to the Family Health Services Appeal Authority see PARA 443.

20 I.e a decision which is treated as a national disqualification by virtue of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001, SI 2001/3744, reg 6(4)(b).

21 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(da)(ii) (as added: see note 19). The National Health Service Tribunal was abolished by the Health and Social Care Act 2001 s 16 and is replaced by the Family Health Services Appeal Authority.

22 I.e pursuant to regulations made under the National Health Service Act 1977 s 29B(2A) (repealed). As to the meaning of 'medical practitioner' see PARA 113 note 11.

23 I.e on grounds corresponding to the conditions referred to in the National Health Service Act 2006 s 151(2), (3) or (4) (efficiency cases, fraud cases and unsuitability cases): see PARA 388. 'Primary care list' means: (1) a list of persons undertaking to provide general ophthalmic services or pharmaceutical services prepared pursuant to regulations made under the National Health Service Act 1979 s 39 (see PARA 295) or the National Health Service Act 2006 ss 129, 132 (see PARAS 340, 342); (2) a list of persons approved for the purpose of assisting in the provision of any such services prepared pursuant to regulations made under s 149 (see PARA 344): Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2) (definition added by SI 2003/1616); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

24 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(da)(iii) (as added (see note 19); and amended by SI 2004/865).

25 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(da)(iv) (as added: see note 19).

26 le on any of the grounds set out in the National Health Service Act 2006 s 151 (see PARA 388), or by a direction of the National Health Service Tribunal.

27 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(da)(v) (as added: see note 19).

28 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(da)(vi) (as added: see note 19).

29 le by virtue of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001, SI 2001/3744, reg 6(2).

30 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(da)(vii) (as added: see note 19).

31 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(e)(i). As to the executive committee see PARA 118.

32 This provision does not apply to the National Institute for Health and Clinical Excellence, the National Patient Safety Agency, the National Treatment Agency, the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG), the NHS Institute for Innovation and Improvement, or the NHS Professionals Special Health Authority: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(e)(iii), Sch 1 (substituted by SI 2002/38; and amended by SI 2004/18; SI 2005/6; SI 2005/497; SI 2005/502; SI 2005/1446; SI 2005/1781; SI 2005/2529; SI 2005/2532). As to individual special health authorities see PARA 145 et seq.

33 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(e)(iii) (amended by SI 2003/1616; SI 2002/2469).

34 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(f).

35 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(ff) (added by SI 2004/696).

36 'Health care professional' means a medical practitioner, a dental practitioner, a registered nurse or registered midwife, a registered pharmacist, an optometrist or a dispensing optician whose name is entered in a register maintained under the Opticians Act 1989 s 7 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 838), a person who is registered as a member of a profession to which the Health Professions Order 2001, SI 2002/254, extends (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 325), a registered osteopath as defined by the Osteopaths Act 1993 s 41 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 503), or a registered chiropractor as defined by the Chiropractors Act 1994 s 43 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 615): Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(5) (amended by SI 2002/880; SI 2004/1771; SI 2005/848). As to the meaning of 'dental practitioner' see PARA 87 note 7. As to the registration of nurses and midwives see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 716 et seq. As to the registration of pharmacists see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 888.

37 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(g)(i) (amended by SI 2004/865; SI 2006/562). As to primary medical services see PARA 241. As to primary dental services see PARA 277. As to general ophthalmic services see PARA 295 et seq. As to pharmaceutical services see PARA 339 et seq. As to the meaning of 'community health services' see PARA 113 note 12.

38 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(g)(ia) (added by SI 2002/2861). As to local pharmaceutical services see PARA 416 et seq.

39 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(h).

40 le pursuant to the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10: see PARA 437.

41 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(i) (amended by SI 2003/1616; SI 2004/696; SI 2006/552; SI 2006/562).

42 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(j) (added by SI 2001/3787).

43 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(1)(k) (added by SI 2004/696).

44 As to the meaning of the 'preparatory period' see PARA 111 note 11.

45 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(4)(a) (amended by SI 2003/1616).

46 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 5(4)(c) (amended by SI 2004/696).

47 As to the meaning of 'writing' see PARA 7 note 2.

48 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 6(3). Where the Secretary of State refuses an application to remove a disqualification no further application may be made by that person until the expiry of the period of two years beginning with the date of the application and this provision applies to any subsequent application: reg 6(4).

49 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 6(5).

## **UPDATE**

### **116 Disqualification for appointment: chairman and non-officer members**

NOTES 10-30--SI 2000/89 reg 5(d) amended, reg 5(dza) added: SI 2008/2250.

NOTE 23--Definition of 'primary care list' amended: SI 2008/1700.

TEXT AND NOTE 37--SI 2000/89 reg 5(1)(g)(i) further amended in relation to England: SI 2008/1700.

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### **117. Vice-chairman.**

The chairman<sup>1</sup> and members<sup>2</sup> of a primary care trust<sup>3</sup> may appoint one of their number, who is not an officer member<sup>4</sup> of the trust, to be vice-chairman, for such period, not exceeding the remainder of his term as a member of the trust, as they may specify on appointing him<sup>5</sup>. Any member so appointed may at any time resign from the office of vice-chairman by giving notice in writing<sup>6</sup> to the chairman<sup>7</sup>.

Where a member of a primary care trust is appointed to be vice-chairman<sup>8</sup>, and the chairman of the trust has died or has ceased to hold office, or is unable to perform his duties as chairman owing to illness, absence from England and Wales or any other cause<sup>9</sup>, the vice-chairman must act as chairman until a new chairman is appointed or the existing chairman resumes his duties, as the case may be<sup>10</sup>.

1 As to the chairman see PARA 112.

2 As to the meaning of 'member' see PARA 113 note 2.

3 As to the meaning of 'primary care trust' see PARA 113 note 1. As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 As to the meaning of 'officer member' see PARA 113 note 4.

5 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 7(1). Regulation 7 does not apply in relation to any primary care trust to which reg 4C (see PARA 115) applies: reg 7(4) (added by SI 2008/1269).

6 As to the meaning of 'writing' see PARA 7 note 2.

7 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 7(2). The date on which such a resignation takes effect is, where a date is specified in the notice as being that on which the resignation is to take effect, that date (reg 7(3)(a)); and in any other case, the date on which the notice is received by the chairman (reg 7(3)(b)).

8 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 8(a).

9 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 8(b).

10 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 8. In such a case references to the chairman in the rules as to meetings and proceedings of the trust (see reg 10, Sch 2; and PARA 119) are, so long as there is no chairman able to perform his duties, to be taken to include references to the vice-chairman: reg 8.

As from 16 June 2008 there is substituted for reg 8 the following: Where:

- 13 (1) the chairman of a primary care trust is suspended under reg 4A (see PARA 115) and a member of the trust is appointed to be vice-chairman under reg 4C (see PARA 115) (reg 8(1)(a) (reg 8 substituted by SI 2008/1269)); or
- 14 (2) a member of a primary care trust is appointed to be vice-chairman under the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 7 (see the text to notes 1-7), and the chairman of the trust has died or has ceased to hold

office, or is unable to perform the chairman's duties owing to illness, absence from England and Wales or any other cause (reg 8(1)(b) (as so substituted)),

the vice-chairman must act as chairman until a new chairman is appointed or the existing chairman resumes the chairman's duties, as the case may be (reg 8(2)(a) (as so substituted)); and the references to the chairman in Sch 2 (see PARA 119) must, so long as there is no chairman able to perform the chairman's duties, be taken to include references to the vice-chairman (reg 8(2)(b) (as so substituted)).



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### **118. Appointment of committees and sub-committees.**

Each primary care trust<sup>1</sup> must, in accordance with directions given by the Secretary of State<sup>2</sup>, appoint a committee, to be known as its executive committee, to exercise functions<sup>3</sup> specified in directions given by the Secretary of State<sup>4</sup>. The membership of each executive committee must be drawn up in accordance with directions given by the Secretary of State and must include medical practitioners<sup>5</sup>, nurses<sup>6</sup> and other persons who are not members<sup>7</sup> of the trust<sup>8</sup>. Members of the executive committee must be appointed and their tenure of office terminated in accordance with directions given by the Secretary of State<sup>9</sup>.

Subject to such directions as may be given by the Secretary of State, a primary care trust may and, if directed by him, must: (1) appoint other committees of the trust<sup>10</sup>; or (2) together with one or more strategic health authorities<sup>11</sup>, local health boards<sup>12</sup> or other primary care trusts appoint joint committees<sup>13</sup>, consisting wholly or partly of the chairman<sup>14</sup> and members of the trust or other health service bodies<sup>15</sup>, or wholly of persons who are not members of the trust or other health service bodies in question<sup>16</sup>. A committee or joint committee so appointed may, subject to such directions as may be given by the Secretary of State or the trust or other health service bodies in question, appoint sub-committees consisting wholly or partly of members of the committee or joint committee (whether or not they are members of the trust or other health service bodies in question)<sup>17</sup>; or wholly of persons who are not members of the trust or other health service bodies or the committee of the trust or other health service bodies in question<sup>18</sup>.

1 As to the meaning of 'primary care trust' see PARA 113 note 1. As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the Secretary of State see PARA 6 note 8. As to the power of the Secretary of State to give directions see PARA 16 As to the making of directions generally see PARA 9.

3 As to the meaning of 'functions' see PARA 6 note 3.

4 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(1).

5 As to the meaning of 'medical practitioner' see PARA 113 note 11.

6 As to the meaning of 'nurse' see PARA 113 note 12.

7 As to the meaning of 'member' see PARA 113 note 2.

8 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(2).

9 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(3).

10 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(4)(a).

11 As to strategic health authorities see PARA 94 et seq.

12 As to the meaning of 'local health board' see PARA 17 note 13.

13 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(4)(b) (amended by SI 2003/1616).

14 As to the chairman see PARA 112.

15 As to the meaning of 'health service body' see PARA 116 note 7.

16 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(4).

17 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(5)(a).

18 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(5)(b).

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### **119. Meetings and proceedings.**

The meetings and proceedings of a primary care trust<sup>1</sup> must be conducted in accordance with the statutory rules<sup>2</sup> and with standing orders made by the trust<sup>3</sup>. Subject to such directions as may be given by the Secretary of State, a trust may, on its own in the case of a committee or sub-committee<sup>4</sup> of the trust or jointly with other trusts, strategic health authorities<sup>5</sup> or local health boards<sup>6</sup> in the case of a joint committee or sub-committee thereof, make, vary and revoke standing orders relating to the quorum, proceedings and place of meeting of such committee, joint committee or sub-committee but, subject to any such standing orders, the quorum, proceedings and place of meeting is such as the committee, joint committee or sub-committee may determine<sup>7</sup>. The validity of any proceedings of a primary care trust, or of any of its committees, is not affected by any vacancy among the members or by any defect in the appointment of any member<sup>8</sup>.

1 As to the meaning of 'primary care trust' see PARA 113 note 1. As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 I.e. the rules as to meetings and proceedings of primary care trusts set out in the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, Sch 2 (amended by SI 2001/3787).

3 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 10(1). Subject to those rules, to reg 11 (see PARA 120) and to such directions as may be given by the Secretary of State a trust must make, and may vary or revoke, standing orders for the regulation of its proceedings and business; and such standing orders may contain provision for their own suspension: reg 10(2). As to the Secretary of State see PARA 6 note 8. As to the power of the Secretary of State to give directions see PARA 16. As to the making of directions generally see PARA 9.

4 As to committees and sub-committees, and joint committees and sub-committees see PARA 118.

5 As to strategic health authorities see PARA 94 et seq.

6 As to the meaning of 'local health board' see PARA 17 note 13.

7 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 10(3) (amended by SI 2003/1616).

8 National Health Service Act 2006 Sch 3 para 6. As to the appointment of members see PARA 113.

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## **120. Disability on account of pecuniary interest.**

If the chairman<sup>1</sup> or a member<sup>2</sup> of a primary care trust<sup>3</sup> has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter<sup>4</sup> and is present at a meeting<sup>5</sup> of the trust at which the contract, proposed contract or other matter is the subject of consideration, he must at the meeting and as soon as practicable after its commencement disclose the fact and must not take part in the consideration or discussion of the contract, proposed contract or other matter or vote on any question with respect to it<sup>6</sup>. A trust may, by standing orders<sup>7</sup>, provide for the exclusion of the chairman or a member from a meeting of the trust while any contract, proposed contract or other matter in which he has a pecuniary interest, direct or indirect, is under consideration<sup>8</sup>.

The Secretary of State<sup>9</sup> may, subject to such conditions as he may think fit to impose, remove any disability imposed by these provisions in any case in which it appears to him in the interests of the health service<sup>10</sup> that the disability should be removed<sup>11</sup>.

These provisions apply in relation to a committee or sub-committee and to a joint committee or sub-committee<sup>12</sup> as it applies in relation to a trust and applies to a member of any such committee or sub-committee (whether or not he is also a member of a trust) as it applies to a member of a trust<sup>13</sup>.

1 As to the chairman see PARA 112.

2 As to the meaning of 'member' see PARA 113 note 2.

3 As to the meaning of 'primary care trust' see PARA 113 note 1. As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 Any remuneration, compensation or allowance payable to the chairman or a member by virtue of the National Health Service Act 2006 Sch 3 para 11 (see PARA 121) is not treated as a pecuniary interest for these purposes: Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 11(4). Subject to reg 11(2) (see the text to notes 9-11) and 11(6), the chairman or a member is treated as having an indirect pecuniary interest in a contract, proposed contract or other matter if: (1) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration (reg 11(5)(a)); or (2) he is a partner of, or in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration (reg 11(5)(b)); and in the case of two persons living together as a couple (whether married or not or civil partners of each other or not) the interest of one is, if known to the other, deemed to be also an interest of the other (reg 11(5) (amended by SI 2003/1616; SI 2005/2114)). The chairman or a member is not treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only: (a) of his membership of a company or other body if he has no beneficial interest in any securities of that company or other body (Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 11(6)(a)); or (b) of an interest in any company, body or person with which he is connected as mentioned in reg 11(5) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of or in voting on, any question with respect to that contract, proposed contract or matter (reg 11(6)(b)). Where the chairman or a member has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, reg 11 does not prohibit him from taking part in the consideration or discussion of the contract, proposed

contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest: reg 11(7). As to civil partnerships see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW**.

'Public body' includes any body established for the purpose of carrying on, under national ownership, any industry or part of any industry or undertaking, the governing body of any university, university college or college, school or hall of a university and the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq): Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 11(9). 'Securities' means: (i) shares or debentures, whether or not constituting a charge on the assets of a company or other body, or rights or interests in any share or such debentures; or (ii) rights (whether actual or contingent) in respect of money lent to, or deposited with, any industrial or provident society or building society: reg 11(9). 'Shares' means shares in the share capital of a company or other body or the stock of a company or other body: reg 11(9). As to the meaning of 'person' see PARA 17 note 2. As to companies see **COMPANIES**. As to partnership see **PARTNERSHIP**. As to industrial and provident societies see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2394 et seq. As to building societies see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1856 et seq.

5 As to meetings and proceedings see PARA 119.

6 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 11(1). As to the termination of the tenure of office of a chairman or member for failure to disclose a pecuniary interest see PARA 115.

7 The standing orders made under the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 10(2): see PARA 119.

8 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 11(3).

9 As to the Secretary of State see PARA 6 note 8.

10 As to the meaning of 'health service' see PARA 10 note 3.

11 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 11(2).

12 As to committees and sub-committees see PARA 118.

13 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 11(8).

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## **121. Remuneration of members.**

A primary care trust<sup>1</sup> may pay the chairman<sup>2</sup> and any other members<sup>3</sup> of the trust such remuneration and such travelling and other allowances as may be determined by the Secretary of State<sup>4</sup>. A primary care trust may pay the chairman or any person who has been chairman of the trust such pension, allowance or gratuity as may be determined by the Secretary of State<sup>5</sup>; and if, when a person ceases to be chairman of a primary care trust, the Secretary of State determines that there are special circumstances which make it right that that person should receive compensation, the trust must pay to him a sum by way of compensation of such amount as the Secretary of State may determine<sup>6</sup>. A primary care trust may pay the members of any committee<sup>7</sup> of a trust such travelling and other allowances as may be determined by the Secretary of State<sup>8</sup>.

1 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the chairman see PARA 112.

3 As to membership see PARA 112.

4 National Health Service Act 2006 Sch 3 para 11(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

5 National Health Service Act 2006 Sch 3 para 11(2).

6 National Health Service Act 2006 Sch 3 para 11(4).

7 As to committees see PARA 118.

8 National Health Service Act 2006 Sch 3 para 11(3). As to the delegation of this function to strategic health authorities and primary care trusts see PARA 89.

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## **122. Staff.**

A primary care trust<sup>1</sup> may employ such officers<sup>2</sup> as it considers appropriate<sup>3</sup>. A primary care trust may pay its officers such remuneration and allowances<sup>4</sup>, and employ them on such other terms and conditions<sup>5</sup>, as it considers appropriate<sup>6</sup>. In exercising these powers<sup>7</sup>, and otherwise in connection with the employment of its officers<sup>8</sup>, a primary care trust must act in accordance with regulations<sup>9</sup> and any directions<sup>10</sup> given by the Secretary of State<sup>11</sup>.

The Secretary of State may direct<sup>12</sup> a primary care trust to make the services of any of its officers available to another primary care trust<sup>13</sup>, or to employ any person who is or was employed by another primary care trust and is specified in the direction<sup>14</sup>. Regulations made in relation to strategic health authorities or special health authorities<sup>15</sup> may, in addition to making provision in relation to those authorities, also provide<sup>16</sup> for the transfer of officers of one primary care trust to another<sup>17</sup>, and for arrangements under which the officers of a primary care trust are placed at the disposal of another primary care trust or a local authority<sup>18</sup>.

Where the registration of a dental practitioner<sup>19</sup> in the dentists register<sup>20</sup> is suspended by an interim suspension order<sup>21</sup>, or by a direction or an order of the health committee, the professional performance committee or the professional conduct committee of the General Dental Council<sup>22</sup> following a relevant determination<sup>23</sup> that that practitioner's fitness to practise is impaired<sup>24</sup>, the suspension does not terminate any contract of employment made between the dental practitioner and a primary care trust, but a person whose registration is so suspended must not perform any duties under a contract made between him and a primary care trust which involves the practice of dentistry<sup>25</sup>.

1 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'officer' see PARA 28 note 5.

3 National Health Service Act 2006 Sch 3 para 7(1). As to officers as members of a primary care trust see PARA 112. As to the protection from liability of officers of primary care trusts see PARA 82.

4 National Health Service Act 2006 Sch 3 para 7(2)(a).

5 National Health Service Act 2006 Sch 3 para 7(2)(b).

6 National Health Service Act 2006 Sch 3 para 7(2).

7 National Health Service Act 2006 Sch 3 para 7(3)(a).

8 National Health Service Act 2006 Sch 3 para 7(3)(b).

9 Before making any such regulations, the Secretary of State must consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations: National Health Service Act 2006 Sch 3 para 7(4). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. At the date at which this volume states the law no such regulations had been made. As to the meaning of 'person' see PARA 17 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

10 Such directions must be given by instrument in writing: National Health Service Act 2006 s 273(4). As to the meaning of 'writing' see PARA 7 note 2. As to the making of directions generally see PARA 9.

11 National Health Service Act 2006 Sch 3 para 7(3).

12 Before he gives such a direction, the Secretary of State must consult the person whose services will be made available or who will be employed (National Health Service Act 2006 Sch 3 para 8(2)(a)), satisfy himself that the primary care trust has consulted that person (Sch 3 para 8(2)(b)), or consult any such body as he may recognise as representing that person (Sch 3 para 8(2)(c)). Schedule 3 para 8(2) does not apply in relation to a direction under Sch 3 para 8(1)(a) if the Secretary of State considers it necessary to give the direction for the purpose of dealing temporarily with an emergency (Sch 3 para 8(3)(a)), and has previously consulted bodies recognised by him as representing the person whose services will be made available about the giving of directions for that purpose (Sch 3 para 8(3)(b)).

13 National Health Service Act 2006 Sch 3 para 8(1)(a).

14 National Health Service Act 2006 Sch 3 para 8(1)(b).

15 I.e. regulations made under the National Health Service Act 2006 Sch 2 para 7(8) (see PARA 103) or Sch 6 para 3(8) (see PARA 139). As to strategic health authorities see PARA 94 et seq. As to special health authorities see PARA 136.

16 See the National Health Service Act 2006 Sch 3 para 9.

17 National Health Service Act 2006 Sch 3 para 9(a).

18 National Health Service Act 2006 Sch 3 para 9(b). As to the meaning of 'local authority' see PARA 17 note 3.

19 As to the meaning of 'dental practitioner' see PARA 87 note 7.

20 As to the dentists register see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 417.

21 National Health Service Act 2006 Sch 3 para 10(1)(a). An interim suspension order is an order under the Dentists Act 1984 s 32: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 459.

22 I.e. under any of the Dentists Act 1984 s 27B, 27C or 30: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 456 et seq.

23 A 'relevant determination' that a practitioner's fitness to practise is impaired is a determination which is based solely on: (1) the ground mentioned in the Dentists Act 1984 s 27(2)(b) (deficient professional performance: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 458); (2) the ground mentioned s 27(2)(c) (adverse physical or mental health: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 458); or (3) both those grounds: National Health Service Act 2006 Sch 3 para 10(2).

24 National Health Service Act 2006 Sch 3 para 10(1)(b).

25 National Health Service Act 2006 Sch 3 para 10(3). As to the meaning of 'the practice of dentistry' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 403: definition applied by Sch 3 para 10(3).



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### **123. Trust funds and trustees.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for the appointment of trustees for a primary care trust<sup>3</sup> to hold property<sup>4</sup> on trust<sup>5</sup>: (1) for the general or any specific purposes of the primary care trust (including the purposes of any specific hospital<sup>6</sup> or other establishment or facility which is managed by the trust)<sup>7</sup>; or (2) for any purposes relating to the health service<sup>8</sup>. The order may: (a) make provision as to the persons<sup>9</sup> by whom trustees must be appointed and generally as to the method of their appointment<sup>10</sup>; (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State)<sup>11</sup>; (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate<sup>12</sup>; (d) make provision with respect to the term of office of any trustee and his removal from office<sup>13</sup>.

Where, under these provisions, trustees have been appointed for a primary care trust, the Secretary of State may by order provide for the transfer of any trust property from the trust to the trustees<sup>14</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of orders generally see PARA 9. Orders relating to individual primary care trusts are not recorded in this work.

3 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 As to the meaning of 'property' see PARA 4 note 9.

5 As to supplementary provision relating to such trusts see PARA 71. As to transfers of trust property see PARA 67.

6 As to the meaning of 'hospital' see PARA 12 note 4.

7 National Health Service Act 2006 Sch 3 para 12(1)(a).

8 National Health Service Act 2006 Sch 3 para 12(1)(b). As to the meaning of 'health service' see PARA 10 note 3.

9 As to the meaning of 'person' see PARA 17 note 2.

10 National Health Service Act 2006 Sch 3 para 12(2)(a).

11 National Health Service Act 2006 Sch 3 para 12(2)(b).

12 National Health Service Act 2006 Sch 3 para 12(2)(c). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

13 National Health Service Act 2006 Sch 3 para 12(2)(d).

14 National Health Service Act 2006 Sch 3 para 12(3).

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## **124. Dissolution.**

The Secretary of State<sup>1</sup> may, if a primary care trust<sup>2</sup> is dissolved<sup>3</sup>, by order<sup>4</sup> transfer (or provide for the transfer) to himself or to a strategic health authority<sup>5</sup>, an NHS trust<sup>6</sup>, a special health authority<sup>7</sup>, an NHS foundation trust<sup>8</sup> or another primary care trust any property<sup>9</sup> or liabilities of the dissolved trust<sup>10</sup>. The liabilities which may be so transferred include criminal liabilities<sup>11</sup>. If any consultation requirements<sup>12</sup> apply, they must be complied with before the order is made<sup>13</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 As to the power of the Secretary of State to make an order abolishing a primary care trust see PARA 111.

4 Where a primary care trust is dissolved, such an order includes power to transfer employees of the trust and the order may make any provision in relation to the transfer of those employees which is or may be made in relation to the transfer of employees under the National Health Service Act 2006 Sch 3 para 26 (see PARA 125): Sch 3 para 29. As to the making of orders generally see PARA 9. Orders relating to individual primary care trusts are not recorded in this work. As to the appointment of staff by a primary care trust see PARA 122.

5 As to strategic health authorities see PARA 94 et seq.

6 As to NHS trusts see PARA 155.

7 As to special health authorities see PARA 136.

8 As to NHS foundation trusts see PARA 174.

9 As to the meaning of 'property' see PARA 4 note 9.

10 National Health Service Act 2006 Sch 3 para 23(1).

11 National Health Service Act 2006 Sch 3 para 23(2).

12 'Consultation requirements' means requirements about consultation contained in regulations: National Health Service Act 2006 Sch 3 para 23(4). As to such requirements see the Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999, SI 1999/2337, which have effect under this provision by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9.

13 National Health Service Act 2006 Sch 3 para 23(3).

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## **125. Transfer of property and staff.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> (known as a 'transfer order') transfer (or provide for the transfer of) any of the property<sup>3</sup> and liabilities<sup>4</sup> of a health service authority<sup>5</sup> to a primary care trust<sup>6</sup>, and create or impose (or provide for the creation or imposition of) new rights or liabilities in respect of property transferred or retained<sup>7</sup>. Where a transfer order provides for the transfer of land<sup>8</sup> held on lease from a third party<sup>9</sup>, or any other asset leased or hired from a third party or in which a third party has an interest<sup>10</sup>, the transfer is binding on the third party despite the fact that, apart from this provision, the transfer would have required the third party's consent or concurrence<sup>11</sup>.

The Secretary of State may by order transfer to a primary care trust any specified description of employees<sup>12</sup> of a strategic health authority<sup>13</sup>, a primary care trust<sup>14</sup>, or an NHS trust<sup>15</sup>. Such an order may be made only if any prescribed requirements<sup>16</sup> about consultation have been complied with in relation to each of the employees to be transferred<sup>17</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 The power to make orders under the National Health Service Act 2006 Sch 3 paras 24, 26 (see the text to notes 12-17) is not exercisable by statutory instrument: see s 272(2), (3)(d); and PARA 9. Such orders are not recorded in this work.

3 As to the meaning of 'property' see PARA 4 note 9.

4 In the absence of a specific reference in the legislation, criminal liabilities are not transferred: see *R v Pennine Acute Hospitals NHS Trust (formerly Rochdale Healthcare NHS Trust)* [2003] EWCA Crim 3436, [2004] 1 All ER 1324.

5 'Health service authority' means the Secretary of State, a strategic health authority, a primary care trust, or an NHS trust: National Health Service Act 2006 Sch 3 para 24(5). Any property and liabilities which belong to a health service authority other than the Secretary of State or are used or managed by a strategic health authority, and will be transferred to a primary care trust by or under a transfer order, must be identified by agreement between the health service authority (or strategic health authority) and the primary care trust or, in default of agreement, by direction of the Secretary of State: Sch 3 para 24(2). As to the making of directions generally see PARA 9. As to strategic health authorities see PARA 94 et seq. As to NHS trusts see PARA 155. As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 National Health Service Act 2006 Sch 3 para 24(1)(a).

7 National Health Service Act 2006 Sch 3 para 24(1)(b). Schedule 3 paras 24 and 25 do not affect any existing power of a health service authority to transfer property or liabilities to a primary care trust (Sch 3 para 25(7)(a)), or the extent of the power conferred by s 272(8) (see PARA 9) (Sch 3 para 25(7)(b)). Where it becomes necessary, for the purpose of a transfer by or under a transfer order, to apportion any property or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose: Sch 3 para 25(2). A transfer order may include provision for matters to be settled by arbitration by a person determined in accordance with the order: Sch 3 para 25(6). A certificate issued by the Secretary of State that any specified property, any specified interest in or right over any property, or any specified right or liability, has been vested in a primary care trust by or under a transfer order is conclusive evidence of that fact for all purposes: Sch 3 para 25(4). 'Specified' means specified in the certificate: Sch 3 para 25(5). As to the evidential effect of certificates admissible by statute see **CIVIL PROCEDURE** vol 11 (2009) PARA 897. Stamp duty is not chargeable in respect of any transfer to a primary care trust effected by or under a transfer order: Sch 3 para 25(1). As to stamp duty see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1001 et seq.

8 As to the meaning of 'land' see PARA 24 note 2.

9 National Health Service Act 2006 Sch 3 para 24(3)(a). 'Third party' means a person other than a health service authority: Sch 3 para 24(4). As to the meaning of 'person' see PARA 17 note 2.

10 National Health Service Act 2006 Sch 3 para 24(3)(b).

11 National Health Service Act 2006 Sch 3 para 24(3). Where a transfer order transfers (or provides for the transfer of) any property or rights to which Sch 3 para 24(3) applies, the order must contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order: Sch 3 para 25(3).

12 National Health Service Act 2006 Sch 3 para 26(1). Specific provision is made as to the effect of such an order on the contract of employment of an employee and the rights of an employee in relation to a proposed transfer: see Sch 3 paras 27, 28. See also note 2.

13 National Health Service Act 2006 Sch 3 para 26(2)(a).

14 National Health Service Act 2006 Sch 3 para 26(2)(b).

15 National Health Service Act 2006 Sch 3 para 26(2)(c).

16 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1). As to the making of regulations generally see PARA 9. As to such requirements see the Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999, SI 1999/2337.

17 National Health Service Act 2006 Sch 3 para 26(3).

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## **B. FUNCTIONS**

### **126. Regulations.**

Regulations<sup>1</sup> may provide for any functions exercisable by a primary care trust<sup>2</sup> under or by virtue of the National Health Service Act 2006<sup>3</sup> or any prescribed provision of any other Act<sup>4</sup>, to be exercisable by another primary care trust<sup>5</sup>, by a special health authority<sup>6</sup>, or jointly with any one or more other bodies<sup>7</sup>. Regulations may provide for any such functions to be exercised, on behalf of the primary care trust by whom they are exercisable, by a committee, sub-committee or officer<sup>8</sup> of the trust<sup>9</sup>; and for any functions which<sup>10</sup> are exercisable by a primary care trust jointly with one or more strategic health authorities or other primary care trusts (but not with any NHS trusts) to be exercised, on behalf of the health service bodies in question, by a joint committee or joint sub-committee<sup>11</sup>. Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a primary care trust of any function exercisable by it by virtue of these provisions<sup>12</sup> are enforceable by or against that trust (and no other body)<sup>13</sup>.

Each primary care trust must, in accordance with regulations administer the arrangements<sup>14</sup> for the provision for its area of primary medical services<sup>15</sup>, primary dental services<sup>16</sup>, primary ophthalmic services<sup>17</sup>, pharmaceutical services<sup>18</sup> and local pharmaceutical services<sup>19</sup>; and perform such management and other functions relating to those services as may be prescribed<sup>20</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. Except in prescribed cases, regulations under the National Health Service Act 2006 s 19 must not preclude a person or body by whom the function is exercisable apart from the regulations from exercising the function: s 73(1)(e), (2). 'Prescribed' means prescribed by regulations: see s 275(1). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'functions' see PARA 6 note 3. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 19: the Functions of Primary Care Trusts and Strategic Health Authorities and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (England) Regulations 2006, SI 2006/596; the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89 (see PARAS 113-120); the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375 (see PARAS 89-93, 127).

2 As to the establishment and status of primary care trusts see PARA 111. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 Ie including the National Health Service Act 2006 s 19.

4 National Health Service Act 2006 s 19(1), (2).

5 National Health Service Act 2006 s 19(2)(a).

6 National Health Service Act 2006 s 19(2)(b). Where, by virtue of s 19(2)(b), a special health authority exercises functions of a primary care trust in relation to a general dental services contract (s 19(5)), the Secretary of State may by order make provision for the transfer to the special health authority of the rights and liabilities of the trust under the contract (and for their transfer back to the trust where the special health authority ceases to exercise the functions) (s 19(6)). As to special health authorities see PARA 136. As to general dental services contracts see PARA 278. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the making of orders generally see PARA 9.

7 National Health Service Act 2006 s 19(2)(c). The other bodies are strategic health authorities, NHS trusts, local health boards, and other primary care trusts: s 19(3). As to strategic health authorities see PARA 94 et seq. As to NHS trusts see PARA 155. As to the meaning of 'local health board' see PARA 17 note 13.

8 As to the meaning of 'officer' see PARA 28 note 5.

9 National Health Service Act 2006 s 19(4)(a). As to committees and sub-committees see PARA 118. As to the appointment of officers see PARA 122.

10 Ie under the National Health Service Act 2006 s 19.

11 National Health Service Act 2006 s 19(4)(b).

12 Ie by virtue of the National Health Service Act 2006 s 19.

13 National Health Service Act 2006 Sch 3 para 16(1). This provision does not apply in relation to the joint exercise of any functions by a primary care trust with another body under s 19(2)(c) (see the text to note 7): Sch 3 para 16(2).

14 Ie made in pursuance of the National Health Service Act 2006.

15 As to primary medical services see PARA 241.

16 As to primary dental services see PARA 277.

17 As to primary ophthalmic services see PARA 328.

18 As to the meaning of 'pharmaceutical services' see PARA 339.

19 National Health Service Act 2006 s 22(a). As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

20 National Health Service Act 2006 s 22(b). By virtue of the National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 22: the National Health Service (Family Practitioner Committees--Supply of Goods) Regulations 1974, SI 1974/191 (amended by SI 2002/2469); the National Health Service (Functions of Health Authorities) (Complaints) Regulations 1996, SI 1996/669 (amended by SI 2002/2469; SI 2004/865; SI 2004/1016).

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## **127. Exercise of functions.**

The Secretary of State<sup>1</sup> may direct a primary care trust<sup>2</sup> to exercise any of his functions<sup>3</sup> relating to the health service<sup>4</sup> which are specified in the directions<sup>5</sup>; and he may give directions to a primary care trust about its exercise of any functions<sup>6</sup>. Subject to such directions<sup>7</sup>, a strategic health authority<sup>8</sup> may give directions to a primary care trust about its exercise of any function<sup>9</sup>. Provision has been made by regulations as to the exercise by a primary care trust of certain of the Secretary of State's functions and the manner of such exercise<sup>10</sup>.

Subject as provided<sup>11</sup> and to any directions given by the Secretary of State or, subject to any such directions, any directions given by the appropriate strategic health authority<sup>12</sup> with respect to its exercise, any function exercisable by a primary care trust<sup>13</sup> may, by arrangement with that trust, and subject to such restrictions and conditions as that trust may think fit, be exercised<sup>14</sup>: (1) by another primary care trust<sup>15</sup>; (2) in the case of the functions of an assessment panel<sup>16</sup> by a committee or sub-committee of another primary care trust<sup>17</sup>; (3) by a special health authority<sup>18</sup>; (4) jointly with any one or more strategic health authorities<sup>19</sup>, local health boards<sup>20</sup>, NHS trusts<sup>21</sup>, or other primary care trusts<sup>22</sup>; or (5) on behalf of the trust by a committee, sub-committee or officer<sup>23</sup> of the trust<sup>24</sup>. Any function exercisable by a primary care trust under or in relation to arrangements<sup>25</sup> for the provision of instruction for health officers and others, and any function which a primary care trust may be directed to exercise<sup>26</sup> in relation to the provision of facilities for university clinical teaching and research, may by arrangement with that trust be exercised jointly with one or more strategic health authorities, local health boards, special health authorities, NHS trusts or other primary care trusts<sup>27</sup>.

Subject to any directions which may be given by the Secretary of State, a primary care trust may enter into arrangements with a local health board or local health boards for specified functions<sup>28</sup> which are exercisable by that board or boards, to be exercised jointly between the primary care trust and the board or boards<sup>29</sup>, or on behalf of the trust and board by a joint committee or joint sub-committee<sup>30</sup>.

In exercising its functions a primary care trust must have regard to any health improvement plan prepared by it<sup>31</sup>.

If the Secretary of State considers that a primary care trust is not performing any of its functions adequately or at all, or that there are significant failings in the way the trust is being run, he may make an intervention order<sup>32</sup>; and if he considers that a trust has failed to carry out any functions, or to comply with any regulations or directions relating to those functions, he may make an order declaring it to be in default<sup>33</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts see PARA 126 et seq. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 As to the meaning of 'functions' see PARA 6 note 3.

4 As to the meaning of 'health service' see PARA 10 note 3.

5 See the National Health Service Act 2006 s 7(1); and PARA 7. The Parliamentary Commissioner for Administration may not conduct an investigation in respect of any action taken on behalf of the Secretary of

State by a primary care trust, and for these purposes action taken by a primary care trust in the exercise of functions of the Secretary of State is regarded as action taken on his behalf: see the Parliamentary Commissioner Act 1967 s 5, Sch 3 para 8 (amended by SI 2000/90); and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq. As to investigation by the Health Service Commissioner for England see PARA 643.

6 See the National Health Service Act 2006 s 8(1), (2)(a); and PARA 16. A primary care trust must make arrangements for ensuring that its functions are discharged having regard to the need to safeguard and promote the welfare of children, and any services provided by another person pursuant to arrangements made by the trust in the discharge of its functions are provided having regard to that need: see the Children Act 2004 s 11(1)(e), (2). In discharging this duty a trust must have regard to any guidance given to it for the purpose by the Secretary of State: s 11(4). See further **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 187. As to the meaning of 'person' see PARA 17 note 2.

7 See the National Health Service Act 2006 s 20(2).

8 As to strategic health authorities see PARA 94 et seq.

9 National Health Service Act 2006 s 20(1). Except in prescribed cases, such directions must not preclude a person or body by whom the function is exercisable apart from the directions from exercising the function: s 73(1)(f), (2). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the power of a strategic health authority to direct a primary care trust to exercise a function of the authority see s 15; and PARA 107.

10 See the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, regs 3-8; and PARAS 89-93. These regulations apply only in relation to primary care trusts established for areas in England: reg 1(2). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, have effect as if made under the National Health Service Act 2006 s 7 (see PARA 7).

11 Is subject to the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(5), (6): see the text to notes 25-27.

12 As to the meaning of 'appropriate strategic health authority' see PARA 89 note 40.

13 Is under or by virtue of the National Health Service Act 2006, the National Health Service and Community Care Act 1990, the National Health Service Reform and Health Care Professions Act 2002, or the Health and Social Care (Community Health and Standards) Act 2003.

14 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(1) (amended by SI 2004/865); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

15 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(1)(a).

16 Is a panel appointed under the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 para 31 or 36 (see PARA 246) or the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 5 para 30 or 34 (see PARA 268).

17 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(1)(aa) (added by SI 2004/865). As to committees and sub-committees of primary care trusts see PARA 118.

18 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(1)(b). Subject to any directions given by the Secretary of State or, subject to any such directions, any directions given by the appropriate strategic health authority with respect to its exercise, any functions which, under reg 10(1)(b), are exercisable by a special health authority may be exercised on behalf of that authority by a committee, sub-committee or officer of that authority (reg 10(2)); but this does not apply in the case of the Mental Health Act Commission (reg 10(3) (amended by SI 2006/635)). As to special health authorities see PARA 136. As to the Mental Health Act Commission see PARA 146.

19 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(1)(c)(i). Subject to any directions given by the Secretary of State or, subject to any such directions, the appropriate strategic health



authority with respect to their exercise, any functions which, under reg 10(1)(c), are exercisable by a primary care trust jointly with one or more strategic health authorities, local health boards or other primary care trusts (but not with any NHS trusts) may by arrangement with those health service bodies be exercised on behalf of those bodies by a joint committee or a joint sub-committee: reg 10(4) (amended by SI 2003/1497).

20 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(1)(c)(ii) (substituted by SI 2003/1497). See also note 19. As to the meaning of 'local health board' see PARA 17 note 13.

21 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(1)(c)(iii). See also note 19. As to NHS trusts see PARA 155.

22 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(1)(c)(iv). See also note 19.

23 As to the meaning of 'officer' see PARA 28 note 5. As to the appointment of officers see PARA 122.

24 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(1)(d).

25 Ie under the Health Services and Public Health Act 1968 s 63(1): see PARA 20.

26 Ie by virtue of the National Health Service Act 2006 s 258(1): see PARA 22.

27 See the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 10(5), (6) (both amended by SI 2003/1497); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

28 The specified functions are any functions exercisable by a local health board under or by virtue of the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, the National Health Service and Community Care Act 1990, the National Health Service Reform and Health Care Professions Act 2002, the Health and Social Care (Community Health and Standards) Act 2003, or the Nursing and Midwifery Order 2001, SI 2002/253; National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 11(3) (amended by SI 2003/1497; SI 2004/865); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

29 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 11(2)(a) (reg 11(2) amended by SI 2003/1497).

30 National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002, SI 2002/2375, reg 11(2)(b) (as amended: see note 29).

31 See the National Health Service Act 2006 s 24(6); and PARA 131.

32 See the National Health Service Act 2006 ss 66, 67; and PARA 79.

33 See the National Health Service Act 2006 s 68; and PARA 80.

## UPDATE

### 127 Exercise of functions

NOTES 11, 25, 26--A primary care trust may not exercise jointly with an NHS trust any functions under the Mental Health Act 1983 s 130A (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 436): SI 2002/2375 reg 10(1A) (added by SI 2008/3166).

NOTE 18--SI 2002/2375 reg 10(3) revoked: SI 2009/462.

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## **128. Powers.**

A primary care trust<sup>1</sup> may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions<sup>2</sup>. In particular it may: (1) acquire and dispose of property<sup>3</sup>; (2) enter into contracts<sup>4</sup>; and (3) accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the trust or for any purposes relating to the health service)<sup>5</sup>.

The powers of a primary care trust include power to enter into externally financed development agreements<sup>6</sup>. A primary care trust may conduct, commission or assist the conduct of research<sup>7</sup>, and may, in particular, make officers<sup>8</sup> available or provide facilities in this connection<sup>9</sup>. A primary care trust may make officers available in connection with any instruction provided<sup>10</sup> for health officers and others<sup>11</sup>, and make officers and facilities available in connection with training by a university<sup>12</sup> or any other body providing training in connection with the health service<sup>13</sup>.

A primary care trust may be authorised to purchase land<sup>14</sup> compulsorily for the purposes of its functions by means of an order made by the trust and confirmed by the Secretary of State<sup>15</sup>.

1 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts and their exercise see PARAS 126, 127. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 National Health Service Act 2006 Sch 3 para 15(1). As to the meaning of 'functions' see PARA 6 note 3. As to the interpretation of a similar provision in relation to local government see **LOCAL GOVERNMENT** vol 69 (2009) PARA 462.

3 National Health Service Act 2006 Sch 3 para 15(2)(a). As to the meaning of 'property' see PARA 4 note 9.

4 National Health Service Act 2006 Sch 3 para 15(2)(b).

5 National Health Service Act 2006 Sch 3 para 15(2)(c). As to the meaning of 'health service' see PARA 10 note 3. As to trusts see further PARAS 66 et seq, 123.

6 National Health Service Act 2006 Sch 3 para 17(1). For these purposes, an agreement is an 'externally financed development agreement' if it is certified as such in writing by the Secretary of State: Sch 3 para 17(2). The Secretary of State may give a certificate if in his opinion the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the primary care trust of any of its functions (Sch 3 para 17(3)(a)), and a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement (Sch 3 para 17(3)(b)). 'Another party' means any party to the agreement other than the primary care trust: Sch 3 para 17(5). The fact that an agreement made by a primary care trust has not been certified does not affect its validity: Sch 3 para 17(6). If a primary care trust enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within Sch 3 para 17(3)(b) in relation to the externally financed development agreement: Sch 3 para 17(4). As to the meaning of 'writing' see PARA 7 note 2. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the meaning of 'facilities' see PARA 12 note 7. As to the meaning of 'person' see PARA 17 note 2.

7 National Health Service Act 2006 Sch 3 para 18(1).

8 As to the meaning of 'officer' see PARA 28 note 5. As to the appointment of officers see PARA 122.

9 National Health Service Act 2006 Sch 3 para 18(2).

10 Ie under the Health Services and Public Health Act 1968 s 63(1): see PARA 20.

11 National Health Service Act 2006 Sch 3 para 19(1).

12 As to the meaning of 'university' see PARA 22 note 4.

13 National Health Service Act 2006 Sch 3 para 19(2).

14 As to the meaning of 'land' see PARA 24 note 2.

15 National Health Service Act 2006 Sch 3 para 22(1). The Acquisition of Land Act 1981 (see **COMPULSORY ACQUISITION OF LAND**) applies to such compulsory purchase of land: National Health Service Act 2006 Sch 3 para 22(2). No order may be made by a primary care trust under the Acquisition of Land Act 1981 Pt 2 (ss 10-15) in respect of any land unless the proposal to acquire the land compulsorily has been submitted to the Secretary of State in the form, and with the information, required by him, and has been approved by him: National Health Service Act 2006 Sch 3 para 22(3).

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## **129. Provision of services.**

A primary care trust<sup>1</sup> may provide services under an agreement for the provision of primary medical services<sup>2</sup> or of primary dental services<sup>3</sup>, and may do so as a member of a qualifying body<sup>4</sup>. A primary care trust may arrange for the provision by it to another health service body<sup>5</sup> of goods<sup>6</sup> or services which are of the same description as those which, at the time of making the arrangement, the primary care trust has power to provide in carrying out its other functions<sup>7</sup>. A primary care trust may provide premises for the use of persons<sup>8</sup> providing pharmaceutical services<sup>9</sup>, or providing or performing primary medical services, primary dental services or primary ophthalmic services<sup>10</sup>, on any terms it considers appropriate<sup>11</sup>.

A primary care trust which manages any health service hospital<sup>12</sup> may make accommodation or services available there for patients<sup>13</sup> who give undertakings (or for whom undertakings are given) to pay any charges<sup>14</sup> imposed by the trust in respect of the accommodation or services<sup>15</sup>. A primary care trust has power to do anything specified in the statutory provisions relating to additional powers for financing the health service<sup>16</sup>, other than make accommodation or services available for patients at any health service hospital it manages, for the purpose of making additional income available for improving the health service<sup>17</sup>.

1 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts and their exercise see PARAS 126, 127. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 National Health Service Act 2006 s 21(1)(a). An agreement for the provision of primary medical services is an agreement under s 92: see PARA 267. As to primary medical services see PARA 241.

3 National Health Service Act 2006 s 21(1)(b). An agreement for the provision of primary dental services is an agreement under s 107: see PARA 288. As to primary dental services see PARA 277.

4 National Health Service Act 2006 s 21(1). A qualifying body is one within the meaning given by s 93 (see PARA 267) or s 108 (see PARA 288): s 21(1).

5 'Health service body' means a body which is a health service body for the purposes of the National Health Service Act 2006 s 9 (see PARA 228): s 21(7).

6 As to the meaning of 'goods' see PARA 12 note 7.

7 National Health Service Act 2006 s 21(2). As to the meaning of 'functions' see PARA 6 note 3.

8 As to the meaning of 'person' see PARA 17 note 2.

9 National Health Service Act 2006 s 21(3)(a). As to the meaning of 'pharmaceutical services' see PARA 339.

10 National Health Service Act 2006 s 21(3)(b). As to primary ophthalmic services see PARA 328.

11 National Health Service Act 2006 s 21(3).

12 As to the meaning of 'health service hospital' see PARA 21 note 7. 'Hospital' includes any establishment or facility managed for the purposes of the health service: National Health Service Act 2006 s 21(7). As to the meaning of 'health service' see PARA 10 note 3.

13 As to the meaning of 'patient' see PARA 15 note 6.

14 As to the recovery of charges see PARA 482.

15 National Health Service Act 2006 s 21(4). A primary care trust may exercise a power conferred by s 21(4) or (5) (see the text to notes 16-17) only: (1) to the extent that its exercise does not to any significant extent interfere with the performance by the trust of its functions or of its obligations under NHS contracts or under agreements or arrangements made with NHS foundation trusts (s 21(6)(a)); and (2) in circumstances specified in directions under s 8 (see PARA 16) with the Secretary of State's consent (s 21(6)(b)). As to the meaning of 'NHS contract' see PARA 228. As to NHS foundation trusts see PARA 174. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

16 le in the Health and Medicines Act 1988 s 7(2): see PARA 503.

17 National Health Service Act 2006 s 21(5). See also note 15.

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**130. Advice.**

Each primary care trust<sup>1</sup> must make arrangements with a view to securing that it receives advice appropriate for enabling it effectively to exercise the functions<sup>2</sup> exercisable by it from persons<sup>3</sup> with professional expertise relating to the physical or mental health of individuals<sup>4</sup>.

1 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts and their exercise see PARAS 126, 127. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'functions' see PARA 6 note 3.

3 As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service Act 2006 s 23.

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### **131. Plans for improving health and the provision of health care.**

Each primary care trust<sup>1</sup> must, at such times as the Secretary of State<sup>2</sup> may direct<sup>3</sup>, prepare a plan which sets out a strategy for improving the health of the people for whom it is responsible<sup>4</sup>, and the provision of health care to such people<sup>5</sup>. The Secretary of State may give directions as to: (1) the periods to be covered by plans<sup>6</sup>; (2) the action to be taken by strategic health authorities<sup>7</sup>, primary care trusts, and local authorities<sup>8</sup> in connection with the preparation or review of plans<sup>9</sup>; (3) the matters to be taken into account in connection with the preparation or review of plans<sup>10</sup>; (4) the matters to be dealt with by plans<sup>11</sup>; (5) the form and content of plans<sup>12</sup>; (6) the publication of plans<sup>13</sup>; (7) the sharing of information between strategic health authorities, primary care trusts, local health boards<sup>14</sup> and local authorities in connection with the preparation or review of plans<sup>15</sup>; and (8) the provision by strategic health authorities, primary care trusts and local health boards of reports or other information to the Secretary of State in connection with plans<sup>16</sup>.

Each primary care trust must keep under review any plan which it prepares<sup>17</sup>. Each local authority whose area falls wholly or partly within the area of a primary care trust must participate in the preparation or review by the trust of any plan<sup>18</sup>. In preparing or reviewing any plan, a primary care trust must consult, or seek the participation of, such persons<sup>19</sup> as the Secretary of State may direct<sup>20</sup>, and may consult, or seek the participation of, such other persons as it considers appropriate<sup>21</sup>.

In exercising its functions<sup>22</sup> a primary care trust must have regard to any plan prepared or reviewed by it, and to any plan in relation to which<sup>23</sup> it has participated<sup>24</sup>; a strategic health authority must have regard to any plan prepared or reviewed by a primary care trust any part of whose area falls within its area<sup>25</sup>; and a local authority must have regard to any plan in relation to which it has participated<sup>26</sup>.

1 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts and their exercise see PARAS 126, 127. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the equivalent provision to the National Health Service Act 2006 s 24 in relation to Wales see the National Health Service (Wales) Act 2006 s 40. See also the Health, Social Care and Well-being Strategies (Wales) Regulations 2003, SI 2003/154. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 Such a direction must be given by instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

4 National Health Service Act 2006 s 24(1)(a). The persons for whom a primary care trust is responsible are the people in the area of the trust and such of the people outside the area as may be specified in directions given by the Secretary of State: s 24(7).

5 National Health Service Act 2006 s 24(1)(b). 'Health care' means: (1) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness (s 24(8)(a)); and (2) the promotion and protection of public health (s 24(8)(b)). As to the meaning of 'illness' see PARA 10 note 5. As to the protection of public health in general see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**.

6 National Health Service Act 2006 s 24(5)(a).

7 As to strategic health authorities see PARA 94 et seq.

- 8 As to the meaning of 'local authority' see PARA 17 note 3.
- 9 National Health Service Act 2006 s 24(5)(b).
- 10 National Health Service Act 2006 s 24(5)(c).
- 11 National Health Service Act 2006 s 24(5)(d).
- 12 National Health Service Act 2006 s 24(5)(e).
- 13 National Health Service Act 2006 s 24(5)(f).
- 14 As to the meaning of 'local health board' see PARA 17 note 13.
- 15 National Health Service Act 2006 s 24(5)(g). The plans referred to in this provision include plans under the National Health Service (Wales) Act 2006 s 17 (see PARA 74): see National Health Service Act 2006 s 24(5)(g).
- 16 National Health Service Act 2006 s 24(5)(h). The plans referred to in this provision include plans under the National Health Service (Wales) Act 2006 s 17 (see PARA 74): see National Health Service Act 2006 s 24(5)(h).
- 17 National Health Service Act 2006 s 24(2).
- 18 National Health Service Act 2006 s 24(3).
- 19 As to the meaning of 'person' see PARA 17 note 2.
- 20 National Health Service Act 2006 s 24(4)(a).
- 21 National Health Service Act 2006 s 24(4)(b).
- 22 As to the meaning of 'functions' see PARA 6 note 3.
- 23 Ie by virtue of the National Health Service Act 2006 s 24(4): see the text to notes 19-21.
- 24 National Health Service Act 2006 s 24(6)(a).
- 25 National Health Service Act 2006 s 24(6)(b).
- 26 National Health Service Act 2006 s 24(6)(c).



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### **132. Reports.**

As soon as is practicable after the end of each financial year<sup>1</sup> each primary care trust<sup>2</sup> must prepare a report on the trust's activities during that year and must send a copy of the report to each strategic health authority<sup>3</sup> whose area includes any part of the trust's area and to the Secretary of State<sup>4</sup>. The report must give details of the measures the trust has taken to promote economy, efficiency and effectiveness in using its resources for the exercise of its functions<sup>5</sup>. A primary care trust must prepare and send such other reports, and supply such information, to any strategic health authority whose area includes any part of the trust's area or to the Secretary of State as it, or he, requires<sup>6</sup>.

Provision must be made by regulations<sup>7</sup> requiring primary care trusts to publicise their audited accounts<sup>8</sup>, their annual reports<sup>9</sup>, any auditor's report<sup>10</sup> on their accounts<sup>11</sup>, and any other document as may be prescribed<sup>12</sup>, by taking such steps as may be specified in the regulations<sup>13</sup>.

1 'Financial year' means a period of 12 months ending with 31 March in any year: National Health Service Act 2006 s 275(1).

2 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts and their exercise see PARAS 126, 127. Primary care trusts exist in England only; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 As to strategic health authorities see PARA 94 et seq.

4 National Health Service Act 2006 Sch 3 para 20(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

5 National Health Service Act 2006 Sch 3 para 20(2). As to the meaning of 'functions' see PARA 6 note 3.

6 National Health Service Act 2006 Sch 3 para 20(3).

7 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9.

8 National Health Service Act 2006 Sch 3 para 21(a). As to the preparation and audit of accounts of primary care trusts see PARA 518 et seq.

9 National Health Service Act 2006 Sch 3 para 21(b). A primary care trust's annual report is that prepared under Sch 20: see the text to notes 1-6.

10 Ie any report made pursuant to the Audit Commission Act 1998 s 8 (report of auditor on matter of public interest): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 763.

11 National Health Service Act 2006 Sch 3 para 21(c).

12 National Health Service Act 2006 Sch 3 para 21(d). 'Prescribed' means prescribed by regulations: see s 275(1).

13 National Health Service Act 2006 Sch 3 para 21. At the date at which this volume states the law no such regulations had been made.

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### **133. Reports on consultation.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

Each primary care trust<sup>2</sup> must, at such times as the Secretary of State<sup>3</sup> may direct<sup>4</sup>, prepare a report on the consultation carried out, or proposed to be carried out, before the making by the primary care trust of commissioning decisions<sup>5</sup>, and on the influence that the results of consultation have on its commissioning decisions<sup>6</sup>. The Secretary of State may give directions as to: (1) the periods to be covered by the reports<sup>7</sup>; (2) the matters to be dealt with by the reports<sup>8</sup>; (3) the form and content of the reports<sup>9</sup>; (4) the publication of the reports<sup>10</sup>; (5) decisions that are to be treated as being, or that are to be treated as not being, commissioning decisions<sup>11</sup>.

1 The National Health Service Act 2006 s 24A is added by the Local Government and Public Involvement in Health Act 2007 s 234(2) as from a day to be appointed: see s 245(5). At the date at which this volume states the law no such day had been appointed.

2 As to primary care trusts see PARA 111.

3 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

4 Directions under the National Health Service Act 2006 s 24A must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

5 National Health Service Act 2006 s 24A(1)(a) (as added: see note 1). 'Commissioning decisions', in relation to a primary care trust, means (subject to any directions under s 24A(3)(e): see the text to note 11) decisions as to the carrying out of its functions under Pts 4-7 (ss 83-168): s 24A(2) (as so added). As to the meaning of 'functions' see PARA 6 note 3.

6 National Health Service Act 2006 s 24A(1)(b) (as added: see note 1).

7 National Health Service Act 2006 s 24A(3)(a) (as added: see note 1).

8 National Health Service Act 2006 s 24A(3)(b) (as added: see note 1).

9 National Health Service Act 2006 s 24A(3)(c) (as added: see note 1).

10 National Health Service Act 2006 s 24A(3)(d) (as added: see note 1).

11 National Health Service Act 2006 s 24A(3)(e) (as added: see note 1).

### **UPDATE**

### **133 Reports on consultation**

TEXT AND NOTE 1--Appointed day is 3 November 2008: SI 2008/2434.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(3) HEALTH SERVICE BODIES/(iii) Primary Care Trusts/B. FUNCTIONS/134. Payments in respect of community services.

### **134. Payments in respect of community services.**

A primary care trust<sup>1</sup> may make payments<sup>2</sup> to:

- 78 (1) a local social services authority<sup>3</sup> towards expenditure incurred or to be incurred by it in connection with any social services functions<sup>4</sup>;
- 79 (2) a district council, or a Welsh county council or county borough council<sup>5</sup>, towards expenditure incurred or to be incurred by it in connection with its functions<sup>6</sup> relating to the provision of meals and recreation for old people<sup>7</sup>;
- 80 (3) an authority which is a local education authority<sup>8</sup>, towards expenditure incurred or to be incurred by it in connection with its functions<sup>9</sup>, in so far as it performs those functions for the benefit of disabled persons<sup>10</sup>;
- 81 (4) a local housing authority<sup>11</sup>, towards expenditure incurred or to be incurred by it in connection with its functions<sup>12</sup> relating to the provision of housing<sup>13</sup>;
- 82 (5) any of the specified bodies<sup>14</sup>, in respect of expenditure incurred or to be incurred by it in connection with the provision of housing accommodation<sup>15</sup>; or
- 83 (6) a local authority<sup>16</sup> towards expenditure incurred or to be incurred by the authority in connection with the performance of any of its functions which, in the opinion of the trust have an effect on the health of any individuals<sup>17</sup>, have an effect on, or are affected by, any NHS functions<sup>18</sup>, or are connected with any NHS functions<sup>19</sup>.

Where the expenditure in respect of which a payment<sup>20</sup> is proposed to be made is expenditure in connection with services to be provided by a voluntary organisation<sup>21</sup>, the primary care trust may make payments to the voluntary organisation towards the expenditure incurred or to be incurred by the organisation in connection with the provision of those services, instead of or in addition to making payments under heads (1) to (6) above<sup>22</sup>; and a body or local authority which has received payments under those heads may make out of the sums paid to it payments to the voluntary organisation towards expenditure incurred or to be incurred by the organisation in connection with the provision of those services<sup>23</sup>.

The Secretary of State may by directions<sup>24</sup> prescribe conditions relating to payments under<sup>25</sup> these provisions<sup>26</sup>. No payment may be made under heads (1) to (6) above in respect of any expenditure unless the conditions relating to it conform with the conditions so prescribed for payments of that description<sup>27</sup>; and no payment may be made to a voluntary organisation<sup>28</sup> except subject to conditions which conform with the conditions so prescribed for payments of that description<sup>29</sup>.

1 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts and their exercise see PARAS 126, 127. Primary care trusts exist in England only; as to equivalent provision to the National Health Service Act 2006 ss 256, 257, in relation to local health boards in Wales see the National Health Service (Wales) Act 2006 ss 194, 195, 196. As to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 A payment may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure: National Health Service Act 2006 s 256(5).

3 As to the meaning of 'local social services authority' see PARA 24 note 9.

- 4 National Health Service Act 2006 s 256(1)(a). The social services functions referred to are any within the meaning of the Local Authority Social Services Act 1970 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006), other than functions under the Disabled Persons (Employment) Act 1958 s 3 (see **EMPLOYMENT** vol 39 (2009) PARA 539): National Health Service Act 2006 s 256(1)(a).
- 5 As to district councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24; and as to Welsh county councils and county borough councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37.
- 6 Ie under the Health and Social Services and Social Security Adjudications Act 1983 Sch 9 Pt 2: see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1024.
- 7 National Health Service Act 2006 s 256(1)(b).
- 8 Ie for the purposes of the Education Act 1996: see **EDUCATION** vol 15(1) (2006 Reissue) PARA 20.
- 9 Ie its functions under the Education Acts (within the meaning of the Education Act 1996): see **EDUCATION** vol 15(1) (2006 Reissue) PARA 1.
- 10 National Health Service Act 2006 s 256(1)(c). A 'disabled person' is a person who has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities or who has such other disability as may be prescribed: s 256(9). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. At the date at which this volume states the law no such regulations had been made.
- 11 Ie within the meaning of the Housing Act 1985: see **HOUSING** vol 22 (2006 Reissue) PARA 9.
- 12 Ie under the Housing Act 1985 Pt 2 (ss 8-57): see **HOUSING** vol 22 (2006 Reissue) PARA 220 et seq.
- 13 National Health Service Act 2006 s 256(1)(d).
- 14 The specified bodies are: a registered social landlord within the meaning of the Housing Act 1985 (see s 5(4), (5): and **HOUSING** vol 22 (2006 Reissue) PARA 67); the Commission for the New Towns (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1383 et seq); a new town development corporation (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1382); an urban development corporation established under the Local Government, Planning and Land Act 1980 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1428); and the Housing Corporation (see **HOUSING** vol 22 (2006 Reissue) PARA 18): National Health Service Act 2006 s 256(2).
- 15 National Health Service Act 2006 s 256(1)(e).
- 16 As to the meaning of 'local authority' see PARA 17 note 3.
- 17 National Health Service Act 2006 s 256(3)(a).
- 18 National Health Service Act 2006 s 256(3)(b). 'NHS functions' means functions exercised by an NHS body: s 256(4). As to the meaning of 'NHS body' see PARA 8 note 2.
- 19 National Health Service Act 2006 s 256(3)(c).
- 20 Ie a payment under the National Health Service Act 2006 s 256: see the text to notes 1-19.
- 21 National Health Service Act 2006 s 257(1). As to the meaning of 'voluntary organisation' see PARA 17 note 3.
- 22 National Health Service Act 2006 s 257(2).
- 23 See the National Health Service Act 2006 s 257(3).
- 24 Such directions must be given by instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.
- 25 Ie under the National Health Service Act 2006 ss 256, 257.
- 26 National Health Service Act 2006 s 256(6). The conditions include, in particular, conditions requiring, in such circumstances as may be specified: (1) repayment of the whole or part of a payment (s 256(7)(a)); or (2) in respect of property acquired with a payment, payment of an amount representing the whole or part of an

increase in the value of the property which has occurred since its acquisition (s 256(7)(b)). As to the meaning of 'property' see PARA 4 note 9.

27 National Health Service Act 2006 s 256(8).

28 le under the National Health Service Act 2006 s 257(2) or (3): see the text to notes 22, 23.

29 National Health Service Act 2006 s 257(4).

## **UPDATE**

### **134 Payments in respect of community services**

NOTE 1--National Health Service (Wales) Act 2006 ss 194, 196 amended: SI 2008/3002. See also Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008, SI 2008/2839.

NOTE 14--National Health Service Act 2006 s 256(2) amended: SI 2008/3002. See also Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008, SI 2008/2839.

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### 135. Special notices of births and deaths.

Each registrar of births and deaths<sup>1</sup> must furnish, to the primary care trust<sup>2</sup> the area of which includes the whole or part of the registrar's sub-district, such particulars of each birth and death which occurred in the area of the trust as are entered in a register of births or deaths kept for that sub-district<sup>3</sup>. Regulations<sup>4</sup> may provide as to the manner in which and the times at which the particulars must be furnished<sup>5</sup>.

In the case of each child which is born after the expiry of the twenty-fourth week of pregnancy whether alive or dead<sup>6</sup>, the child's father<sup>7</sup>, if at the time of the birth he is residing on the premises where the birth takes place<sup>8</sup>, and any person in attendance upon the mother at the time of, or within six hours after, the birth<sup>9</sup>, must give notice of the birth to the primary care trust for the area in which the birth takes place<sup>10</sup>. Any person who fails to give such notice of a birth commits an offence<sup>11</sup>, unless he satisfies the court that he believed, and had reasonable grounds for believing, that notice had been duly given by some other person<sup>12</sup>. A registrar of births and deaths must, for the purpose of obtaining information concerning births which have occurred in his sub-district, have access at all reasonable times to notices of births received by a primary care trust under these provisions<sup>13</sup>, or any book in which those notices may be recorded<sup>14</sup>.

1 As to the registration of births and deaths see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 501 et seq.

2 As to the establishment and status of primary care trusts see PARA 111. As to the functions of primary care trusts and their exercise see PARAS 126, 127. Primary care trusts exist in England only; as to the equivalent provision to the National Health Service Act 2006 s 269 in relation to local health boards in Wales see the National Health Service (Wales) Act 2006 s 200. As to local health boards see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 National Health Service Act 2006 s 269(2). The requirements of s 269 with respect to the notification of births and deaths are in addition to, and not in substitution for, the requirements of any Act relating to the registration of births and deaths: s 269(1).

4 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9.

5 National Health Service Act 2006 s 269(3). As to such regulations see the National Health Service (Notification of Births and Deaths) Regulations 1982, SI 1982/286 (amended by SI 2002/2469).

6 National Health Service Act 2006 s 269(5). As to the statutory provisions relating to the medical termination of pregnancy see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 209.

7 As to the construction of references to any relationship between two persons see the Interpretation Act 1978 s 5, Sch 1; Family Law Reform Act 1987 s 1; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 125; **STATUTES** vol 44(1) (Reissue) PARA 1382.

8 National Health Service Act 2006 s 269(4)(a).

9 National Health Service Act 2006 s 269(4)(b).

10 National Health Service Act 2006 s 269(4). The notice must be given either: (1) by posting within 36 hours after the birth a prepaid letter or postcard addressed to the primary care trust at its offices and containing the required information (s 269(6)(a)); or (2) by delivering within that period at the offices of the trust a written notice containing the required information (s 269(6)(b)). A primary care trust must, upon application to it, supply without charge to any medical practitioner or midwife residing or practising within its area prepaid addressed envelopes together with the forms of notice: s 269(7). As to the meaning of 'written'

see PARA 7 note 2. As to the meaning of 'medical practitioner' see PARA 84 note 7. As to midwives see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 691 et seq.

11 The penalty for such an offence is, on summary conviction, a fine not exceeding level 1 on the standard scale: National Health Service Act 2006 s 269(8). Proceedings in respect of such an offence must not, without the Attorney-General's written consent, be taken by any person other than a party aggrieved or the primary care trust concerned: s 269(9). Any function of the Attorney General may be exercised by the Solicitor General: Law Officers Act 1997 s 1. As to the meaning of 'person' see PARA 17 note 2. As to the Attorney General and the Solicitor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529. As to the standard scale see PARA 28 note 12.

12 National Health Service Act 2006 s 269(8).

13 National Health Service Act 2006 s 269(10)(a).

14 National Health Service Act 2006 s 269(10)(b).

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## **(iv) Special Health Authorities**

### **A. STATUS AND MEMBERSHIP**

#### **136. Establishment and status.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> establish special bodies, known as 'special health authorities', for the purpose of exercising any functions<sup>3</sup> which may be conferred on them by or under the National Health Service Act 2006<sup>4</sup>. An order may, in particular, contain provisions as to: (1) the membership of the body established by the order<sup>5</sup>; (2) the transfer to the body of officers<sup>6</sup>, property<sup>7</sup> and liabilities<sup>8</sup>; and (3) the name of the body<sup>9</sup>. The Secretary of State may make such further provision relating to a special health authority as he considers appropriate<sup>10</sup>.

Each special health authority is a body corporate<sup>11</sup>. A special health authority is not to be regarded as a servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown<sup>12</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of orders see PARA 9. As to the orders made under the National Health Service Act 2006 s 28, and those which, by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), have effect thereunder, see PARAS 145-154.

3 As to the meaning of 'functions' see PARA 6 note 3.

4 National Health Service Act 2006 s 28(1), (3). In Wales, the Welsh Ministers have similar powers to establish special health authorities: see the National Health Service (Wales) Act 2006 ss 22-25, Sch 5. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the meaning of 'Wales' see PARA 6 note 2. A special health authority is a public authority for the purposes of the Freedom of Information Act 2000: see s 3, Sch 1 Pt III (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(c)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

5 National Health Service Act 2006 s 28(4)(a).

6 As to the meaning of 'officer' see PARA 28 note 5.

7 As to the meaning of 'property' see PARA 4 note 9.

8 National Health Service Act 2006 s 28(4)(b). The Secretary of State must, before he makes an order, consult with respect to the order such bodies as he may recognise as representing officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the order: s 28(7). The liabilities which may be transferred by virtue of s 28, and ss 272(8), 273(1) (see PARA 9) to an NHS body on the abolition of a special health authority include criminal liabilities: s 28(5). As to the meaning of 'NHS body' see PARA 8 note 2.

9 National Health Service Act 2006 s 28(4)(c).

10 National Health Service Act 2006 s 28(2).

11 National Health Service Act 2006 Sch 6 para 1. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**.

12 See the National Health Service and Community Care Act 1990 s 60 (amended by the Employment Rights Act 1996 s 240, Sch 1 para 45(1), (4); the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 128, 131). This provision may be excluded or modified by order: see National Health Service and



Community Care Act 1990 s 60(5), (6). As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

## **UPDATE**

### **136 Establishment and status**

NOTE 4--National Health Service (Wales) Act 2006 Sch 5 amended: Health Act 2009 Sch 3 para 15. See further Health Act 2009 Sch 3 paras 18, 19.

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### **137. Membership.**

Provision may be made by regulations<sup>1</sup> as to:

- 84 (1) the appointment and tenure of office of the chairman, vice-chairman and members of a special health authority<sup>2</sup>;
- 85 (2) the appointment and tenure of office of any members of a committee or sub-committee of a special health authority who are not members of the authority<sup>3</sup>;
- 86 (3) the appointment and tenure of office of any members of a joint committee or joint sub-committee including a special health authority who are not members of the authority<sup>4</sup>;
- 87 (4) the circumstances in which a member of a special health authority who is (or must be regarded as) an officer<sup>5</sup> of the authority may be suspended from performing his functions as a member<sup>6</sup>;
- 88 (5) the appointment and constitution of committees and sub-committees (and joint committees and joint sub-committees) of (or including) a special health authority (including any such committees consisting wholly or partly of persons who are not members of the authority in question)<sup>7</sup>; and
- 89 (6) the procedure of a special health authority and of such committees and sub-committees as are mentioned in head (5) above<sup>8</sup>.

The proceedings of a special health authority are not invalidated by any vacancy in its membership or by any defect in a member's appointment<sup>9</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. As to the regulations made under the National Health Service Act 2006 Sch 6 para 5, and those which, by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), have effect thereunder, see PARAS 145-154.

2 National Health Service Act 2006 Sch 6 para 5(a). The chairman and any member, not being also an employee, of a special health authority are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1), Sch 1 Pt III; and **PARLIAMENT** vol 78 (2010) PARA 905. As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142. As to pay and allowances for members of special health authorities see PARA 138. As to the protection from liability of members and officers of special health authorities see PARA 82.

3 National Health Service Act 2006 Sch 6 para 5(b).

4 National Health Service Act 2006 Sch 6 para 5(c).

5 Regulations made under the National Health Service Act 2006 Sch 6 may make provision (including provision modifying Sch 6) to deal with cases where the post of chief officer or any other officer of a special health authority is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person: Sch 6 para 6. As to the meaning of 'officer' see PARA 28 note 5. As to the appointment of officers see PARA 139.

6 National Health Service Act 2006 Sch 6 para 5(d).

7 National Health Service Act 2006 Sch 6 para 5(e).

8 National Health Service Act 2006 Sch 6 para 5(f).

9 National Health Service Act 2006 Sch 6 para 10.

## **UPDATE**

### **137 Membership**

NOTE 7--National Health Service Act 2006 Sch 6 para 5(d) substituted: Health Act 2009 Sch 3 para 11. See further Health Act 2009 Sch 3 paras 18, 19.

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### **138. Pay and allowances for chairman and members.**

The Secretary of State<sup>1</sup> may pay to the chairman of a special health authority<sup>2</sup>, and any member of a special health authority who is appointed by the Secretary of State<sup>3</sup>, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>. The Secretary of State may provide as he may determine with the approval of the Treasury for the payment of a pension, allowance or gratuity to or in respect of the chairman of a special health authority<sup>5</sup>. Where a person ceases to be chairman of a special health authority, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may make him a payment of such amount as the Secretary of State may determine with the approval of the Treasury<sup>6</sup>. The Secretary of State may pay to a member of a special health authority, or of a committee or sub-committee of, or joint committee or joint sub-committee including, a special health authority, such travelling and other allowances (including attendance allowance or compensation for the loss of remunerative time) as he may determine with the approval of the Treasury<sup>7</sup>. Payments under these provisions must be made at such times, and in such manner and subject to such conditions, as the Secretary of State may determine with the approval of the Treasury<sup>8</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 National Health Service Act 2006 Sch 6 para 2(1)(a). As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142. As to membership of special health authorities see PARA 137.

3 National Health Service Act 2006 Sch 6 para 2(1)(b).

4 National Health Service Act 2006 Sch 6 para 2(1). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 National Health Service Act 2006 Sch 6 para 2(2).

6 National Health Service Act 2006 Sch 6 para 2(3).

7 National Health Service Act 2006 Sch 6 para 2(4). Allowances may not be paid under Sch 6 para 2(4) except in connection with the exercise, in such circumstances as the Secretary of State may determine with the approval of the Treasury, of such functions as he may so determine: Sch 6 para 2(5). As to the meaning of 'functions' see PARA 6 note 3.

8 National Health Service Act 2006 Sch 6 para 2(6).

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### **139. Staff.**

A special health authority<sup>1</sup> may employ such officers<sup>2</sup> as it may determine<sup>3</sup>; and may pay its officers such remuneration and allowances<sup>4</sup>, and employ them on such other terms and conditions<sup>5</sup>, as it may determine<sup>6</sup>. A special health authority must, in exercising these powers, act in accordance with regulations<sup>7</sup> and any directions<sup>8</sup> given by the Secretary of State<sup>9</sup>.

Regulations may provide for the transfer of officers from one special health authority to another special health authority or to a strategic health authority<sup>10</sup>, and for arrangements under which the services of an officer of a special health authority are placed at the disposal of another special health authority, a strategic health authority or a local authority<sup>11</sup>. Directions may be given by the Secretary of State<sup>12</sup>: (1) to a special health authority to place the services of any of its officers at the disposal of another special health authority or of a strategic health authority<sup>13</sup>; (2) to any special health authority to employ as an officer of the special health authority any person who is or was employed by another special health authority or by a strategic health authority and is specified in the direction<sup>14</sup>.

Where the registration of a dental practitioner<sup>15</sup> in the dentists register<sup>16</sup> is suspended by an interim suspension order<sup>17</sup>, or by a direction or an order of the health committee, the professional performance committee or the professional conduct committee of the General Dental Council<sup>18</sup> following a relevant determination<sup>19</sup> that that practitioner's fitness to practise is impaired<sup>20</sup>, the suspension does not terminate any contract of employment made between the dental practitioner and a special health authority, but a person whose registration is so suspended must not perform any duties under a contract made between him and a special health authority which involves the practice of dentistry<sup>21</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142. As to membership of special health authorities see PARA 137.

2 As to the meaning of 'officer' see PARA 28 note 5.

3 National Health Service Act 2006 Sch 6 para 3(1).

4 National Health Service Act 2006 Sch 6 para 3(2)(a).

5 National Health Service Act 2006 Sch 6 para 3(2)(b).

6 National Health Service Act 2006 Sch 6 para 3(2). As to the protection from liability of officers of special health authorities see PARA 82.

7 Regulations made in pursuance of the National Health Service Act 2006 Sch 6 para 3 may not require that all consultants employed by a special health authority must be so employed whole-time: Sch 6 para 3(13). The Secretary of State must, before he makes regulations under Sch 6 para 3, consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations: Sch 6 para 4(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the following regulations have effect under the National Health Service Act 2006 Sch 6 para 3: the National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, and the National Health Service (Speech Therapists) Regulations 1974, SI 1974/495 (see PARA 140); the National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701 (see PARA 87); and see also PARAS 145-154.

8 Such directions must be given by instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

9 National Health Service Act 2006 Sch 6 para 3(3). Regulations and directions under Sch 6 para 3(3) may make provision with respect to any matter connected with the employment by a special health authority of its officers, including in particular provision: (1) with respect to the qualifications of persons who may be employed as officers of an authority (Sch 6 para 3(4)(a)); (2) requiring a special health authority to employ a chief officer and officers of such other descriptions as may be prescribed and to employ, for the purpose of performing prescribed functions of the authority or any other body, officers having prescribed qualifications or experience (Sch 6 para 3(4)(b)); and (3) as to the manner in which any officers of a special health authority must be appointed (Sch 6 para 3(4)(c)). A direction may relate to a particular officer or class of officer specified in the direction: Sch 6 para 3(5). Regulations and directions under Sch 6 para 3(3) may provide for approvals or determinations to have effect from a date specified in them (Sch 6 para 3(6)); and the date may be before or after the date of giving the approvals or making the determinations but may not be before if it would be to the detriment of the officers to whom the approvals or determinations relate (Sch 6 para 3(7)). 'Prescribed' means prescribed by the regulations: see s 275(1).

10 As to strategic health authorities see PARA 94 et seq.

11 National Health Service Act 2006 Sch 6 para 3(8). As to the meaning of 'local authority' see PARA 17 note 3. Such regulations may also make provision for the transfer of officers of one primary care trust to another primary care trust and for arrangements under which the services of such officers are placed at the disposal of another primary care trust or a local authority: see Sch 3 para 9; and PARA 122. See also note 7.

12 The Secretary of State must, before he gives any such directions to a special health authority in respect of any officer of a special health authority: (1) consult the officer about the directions (National Health Service Act 2006 Sch 6 para 4(2)(a)); (2) satisfy himself that the special health authority of which he is an officer has consulted the officer about the placing or employment in question (Sch 6 para 4(2)(b)); or (3) in the case of a direction under Sch 6 para 3(12)(a), consult with respect to the directions such body as he may recognise as representing the officer (Sch 6 para 4(2)(c)). But if the Secretary of State considers it necessary to give directions under Sch 6 para 3(12)(a) for the purpose of dealing temporarily with an emergency (Sch 6 para 4(3)(a)), and has previously consulted bodies recognised by him as representing the relevant officers about the giving of directions for that purpose (Sch 6 para 4(3)(b)), the Secretary of State may disregard Sch 6 para 4(2) in relation to the directions (Sch 6 para 4(3)).

13 National Health Service Act 2006 Sch 6 para 3(12)(a).

14 National Health Service Act 2006 Sch 6 para 3(12)(b).

15 As to the meaning of 'dental practitioner' see PARA 87 note 7.

16 As to the dentists register see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 417.

17 National Health Service Act 2006 Sch 6 para 3(9)(a). An interim suspension order is an order under the Dentists Act 1984 s 32: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 459.

18 Under any of the Dentists Act 1984 s 27B, 27C or 30: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 456 et seq.

19 A 'relevant determination' that a practitioner's fitness to practise is impaired is a determination which is based solely on: (1) the ground mentioned in the Dentists Act 1984 s 27(2)(b) (deficient professional performance: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 458); (2) the ground mentioned in s 27(2)(c) (adverse physical or mental health: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 458); or (3) both those grounds: National Health Service Act 2006 Sch 6 para 3(10).

20 National Health Service Act 2006 Sch 6 para 3(9)(b).

21 National Health Service Act 2006 Sch 6 para 3(11). As to the meaning of 'the practice of dentistry' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 403: definition applied by Sch 6 para 3(11).

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#### **140. Employment of professions supplementary to medicine.**

No person may be employed as an officer<sup>1</sup> of a special health authority<sup>2</sup>, in the capacity of chiropodist, dietitian, medical laboratory technician, biomedical scientist, occupational therapist, orthoptist, physiotherapist, radiographer<sup>3</sup>, prosthetist and orthotist, arts therapist<sup>4</sup>, clinical scientist, paramedic<sup>5</sup>, or speech and language therapist<sup>6</sup>, unless he is registered<sup>7</sup> in respect of that profession<sup>8</sup>, or he is otherwise qualified for such employment<sup>9</sup>.

1 As to the meaning of 'officer' see PARA 28 note 5. As to the appointment of officers generally see PARA 139.

2 National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(2) (substituted by SI 2000/523, SI 2001/1075). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1, the National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, and the National Health Service (Speech Therapists) Regulations 1974, SI 1974/495 (see note 9), have effect as if made under the National Health Service Act 2006 Sch 6 para 3 (see PARA 139) and the National Health Service (Wales) Act 2006 Sch 5 para 3. As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142. As to membership of special health authorities see PARA 137.

3 National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1) (amended by SI 2000/523, SI 2001/1075, SI 2004/2033).

4 National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1A) (added by SI 2000/523; SI 2001/1075).

5 National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1B) (reg 3(1B), (1C) added by SI 2003/1590). The National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1B), (1C) applies in relation to England only: see the Health Professions Order 2001 (Consequential Amendments) Order 2003, SI 2003/1590, art 2.

6 National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1C) (as added: see note 5).

7 A person is registered in respect of a profession if he is registered in the register maintained under the Health Professions Order 2001, SI 2002/254, art 5 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 325) in the part of the register which relates to that profession: National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 2(2) (substituted by SI 2003/1590).

8 See the National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1)(a) (amended by SI 1978/1090); National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1A)(a) (as added: see note 4), reg 3(1B)(a), (1C)(a) (both as added: see note 5).

9 See National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1)(b) (substituted by SI 1978/1090); National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1A)(b) (as added: see note 4), reg 3(1B)(b), (1C)(b) (both as added: see note 5). A person is otherwise qualified if:

15 (1) in the case of a chiropodist, dietitian, medical laboratory technician, biomedical scientist, occupational therapist, orthoptist, physiotherapist, or radiographer, he is a person who has never been so registered and, immediately before 1 April 1974, was in employment for which he was qualified by virtue of either the National Health Service (Professions Supplementary to Medicine) Regulations 1964, SI 1964/940, reg 3(b) (lapsed) or the National Assistance (Professions Supplementary to Medicine) Regulations 1964, SI 1964/939, reg 3(b) (employment of unregistered officers who had been similarly employed on 29 June 1964) (National Health Service

(Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1)(b) (as so substituted));

- 16 (2) in the case of a prosthetist and orthotist or arts therapist, he is a person who has never been registered as a prosthetist and orthotist or arts therapist, but who, immediately before 1 April 2000, was employed in that capacity by a special health authority (reg 3(1A)(b) (as so added));
- 17 (3) in the case of a clinical scientist or paramedic he is a person who has never been registered as a clinical scientist or paramedic, but who immediately before 9 July 2003 was employed in that capacity by a special health authority (reg 3(1B)(b) (as so added));
- 18 (4) in the case of speech and language therapist, he is a person who satisfies one of the conditions set out in the National Health Service (Speech Therapists) Regulations 1974, SI 1974/495, reg 3 (employment of officers) (National Health Service (Professions Supplementary to Medicine) Regulations 1974, SI 1974/494, reg 3(1C)(b) (as so added)).

Those conditions are that: (a) he holds a certificate issued by the College of Speech Therapists certifying that (i) he has attended a course of training recognised by the College and approved by the Secretary of State and has passed an examination so recognised and approved; or (ii) before 31 July 1986 he has attended a course of training approved by the Secretary of State and passed an examination so approved; or (iii) the College is satisfied that he has, in a country or territory outside the United Kingdom, attended a course of training recognised by the College and approved by the Secretary of State and has passed an examination so recognised and approved (National Health Service (Speech Therapists) Regulations 1974, SI 1974/495, reg 3(1) (substituted by SI 1985/47)); (b) his name is included in a list, kept by the Secretary of State, of persons not qualified in accordance with head (a), who have satisfied the Secretary of State that their training and experience are adequate for employment as speech therapists (National Health Service (Speech Therapists) Regulations 1974, SI 1974/495, reg 3(2)); (c) he was immediately before 1 April 1974 employed as a speech therapist by a regional hospital board or the Welsh hospital board, by a board of governors of a teaching hospital, or by a local health authority or a local education authority (National Health Service (Speech Therapists) Regulations 1974, SI 1974/495, reg 3(4)). As to the Secretary of State see PARA 6 note 8. As to the meaning of 'United Kingdom' see PARA 15 note 8.



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## **141. Trustees.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for the appointment of trustees for a special health authority<sup>3</sup> to hold property on trust<sup>4</sup>: (1) for the general or any specific purposes of the special health authority (including the purposes of any specific hospital<sup>5</sup> or other establishment or facility at or from which services are provided by the authority)<sup>6</sup>; or (2) for any purposes relating to the health service<sup>7</sup>. Such an order may: (a) make provision as to the persons<sup>8</sup> by whom trustees must be appointed and generally as to the method of their appointment<sup>9</sup>; (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State)<sup>10</sup>; (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate<sup>11</sup>; and (d) make provision with respect to the term of office of any trustee and his removal from office<sup>12</sup>.

Where, under these provisions, trustees have been appointed for a special health authority, the Secretary of State may by order provide for the transfer of any trust property<sup>13</sup> from the authority to the trustees<sup>14</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of orders see PARA 9. At the date at which this volume states the law no such orders had been made.

3 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

4 As to supplementary provision relating to such trusts see PARA 71. As to transfers of trust property see PARA 67.

5 As to the meaning of 'hospital' see PARA 12 note 4.

6 National Health Service Act 2006 Sch 6 para 9(1)(a).

7 National Health Service Act 2006 Sch 6 para 9(1)(b). As to the meaning of 'health service' see PARA 10 note 3.

8 As to the meaning of 'person' see PARA 17 note 2.

9 National Health Service Act 2006 Sch 6 para 9(2)(a).

10 National Health Service Act 2006 Sch 6 para 9(2)(b).

11 National Health Service Act 2006 Sch 6 para 9(2)(c). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

12 National Health Service Act 2006 Sch 6 para 9(2)(d).

13 As to the meaning of 'property' see PARA 4 note 9.

14 National Health Service Act 2006 Sch 6 para 9(3).

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## **B. FUNCTIONS**

### **142. Exercise of functions.**

The Secretary of State<sup>1</sup> may direct a special health authority<sup>2</sup> to exercise any of his functions<sup>3</sup> relating to the health service<sup>4</sup>, and may direct a special health authority to exercise any functions of a strategic health authority<sup>5</sup> or a primary care trust<sup>6</sup>. The Secretary of State may give directions to a special health authority about its exercise of any functions<sup>7</sup>.

Regulations<sup>8</sup> may provide: (1) for any of the Secretary of State's functions relating to the health service which are exercisable by a special health authority<sup>9</sup> to be exercised by another special health authority<sup>10</sup>, or jointly with one or more other special health authorities<sup>11</sup>; (2) for any such functions, or functions of a strategic health authority or primary care trust, which are exercisable by a special health authority<sup>12</sup> to be exercised on behalf of that special health authority by a committee, sub-committee or officer<sup>13</sup> of the special health authority<sup>14</sup>; (3) for any functions exercisable jointly with one or more other special health authorities<sup>15</sup> to be exercised, on behalf of the special health authorities in question, by a joint committee or joint sub-committee<sup>16</sup>.

Subject to any directions which may be given by the Secretary of State with respect to its exercise, any function exercisable<sup>17</sup> by a special health authority<sup>18</sup> may, by arrangement with that authority and subject to such restrictions and conditions as that authority may think fit, be exercised on behalf of that authority by a committee or sub-committee, or an officer, of that authority<sup>19</sup>; or a joint committee, or joint sub-committee, of that authority and one or more other special health authorities<sup>20</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136.

3 As to the meaning of 'functions' see PARA 6 note 3.

4 See the National Health Service Act 2006 s 7(1); and PARA 7. As to the meaning of 'health service' see PARA 10 note 3. Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a special health authority of any function exercisable by it by virtue of s 7 or s 29 (see the text to notes 8-16) are enforceable by or against that special health authority (and no other body): Sch 6 para 12(1). However, this provision does not apply in relation to the joint exercise of any functions by a special health authority with another body under s 29(1)(b) (see the text to note 11): Sch 6 para 12(2). In the absence of a specific reference in the legislation, criminal liabilities are not transferred: see *R v Pennine Acute Hospitals NHS Trust (formerly Rochdale Healthcare NHS Trust)* [2003] EWCA Crim 3436, [2004] 1 All ER 1324.

The Parliamentary Commissioner for Administration may not conduct an investigation in respect of any action taken on behalf of the Secretary of State by a special health authority, and for these purposes action taken by a special health authority in the exercise of functions of the Secretary of State is regarded as action taken on his behalf: see the Parliamentary Commissioner Act 1967 s 5, Sch 3 para 8 (amended by SI 2000/90); and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq. As to investigation by the Health Service Commissioner for England see PARA 643.

5 As to strategic health authorities see PARA 94 et seq.

6 See the National Health Service Act 2006 s 7(2); and PARA 7. See also note 4. As to primary care trusts see PARA 111.

7 See the National Health Service Act 2006 s 8; and PARA 16. A special health authority, so far as exercising functions in relation to England, designated by order made by the Secretary of State for the purposes of the Children Act 2004 s 11 must make arrangements for ensuring that its functions are discharged having regard to the need to safeguard and promote the welfare of children, and any services provided by another person pursuant to arrangements made by it in the discharge of its functions are provided having regard to that need: Children Act 2004 s 11(1)(d), (2). In discharging this duty a special health authority must have regard to any guidance given to it for the purpose by the Secretary of State: s 11(4). See further **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 187. As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'England' see PARA 6 note 2.

8 Except in prescribed cases, such regulations must not preclude a person or body by whom the function is exercisable apart from the regulations from exercising the function: National Health Service Act 2006 s 73(1)(g), (2). 'Prescribed' means prescribed by the regulations: see s 275(1). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 29: the National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996, SI 1996/708 (see the text to notes 17-20). See also the regulations referred to in PARAS 145-154.

9 Ie under the National Health Service Act 2006 s 7: see PARA 7.

10 National Health Service Act 2006 s 29(1)(a).

11 National Health Service Act 2006 s 29(1)(b).

12 Ie under the National Health Service Act 2006 s 7 (see PARA 7), s 14 (see PARA 105), s 19 (see PARA 126) or s 29.

13 As to the meaning of 'officer' see PARA 28 note 5. As to the appointment of officers see PARA 139.

14 National Health Service Act 2006 s 29(2)(a).

15 Ie under the National Health Service Act 2006 s 29(1)(b): see the text to note 11.

16 National Health Service Act 2006 s 29(2)(b).

17 Ie under the National Health Service Act 2006 s 28 (see PARA 136): National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996, SI 1996/708, reg 5(5); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

18 This provision does not apply to the Mental Health Act Commission: National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996, SI 1996/708, reg 5(6). As to the Mental Health Act Commission see PARA 146.

19 National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996, SI 1996/708, reg 5(5)(a).

20 National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996, SI 1996/708, reg 5(5)(b).

## UPDATE

### 142 Exercise of functions

NOTES 8, 17--20--SI 1996/708 revoked, in relation to Wales, by SI 2009/1511.

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### **143. Powers.**

A special health authority<sup>1</sup> may pay subscriptions, of such amounts as the Secretary of State<sup>2</sup> may approve, to the funds of such bodies as he may approve<sup>3</sup>. A special health authority has power to accept gifts of property<sup>4</sup> (including property to be held on trust, either for the general or any specific purposes of the authority or for any purposes relating to the health service)<sup>5</sup>.

A special health authority may make available at a hospital<sup>6</sup> for which it has responsibility accommodation or services for patients<sup>7</sup> who give undertakings (or for whom undertakings are given) to pay any charges imposed by the authority in respect of the accommodation or services<sup>8</sup>, and make and recover charges in respect of such accommodation or services and calculate them on any basis that it considers to be the appropriate commercial basis<sup>9</sup>. A special health authority may exercise this power only if it is satisfied that its exercise does not to any significant extent interfere with the performance by the authority of any function<sup>10</sup> conferred on it under the National Health Service Act 2006 to provide accommodation or services of any kind<sup>11</sup>, and does not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals<sup>12</sup> (whether as resident or non-resident patients) otherwise than under this provision<sup>13</sup>. A special health authority may allow accommodation or services which are made available<sup>14</sup> to be so made available in connection with treatment in pursuance of arrangements made by a medical practitioner<sup>15</sup> or dental practitioner<sup>16</sup> serving (whether in an honorary or paid capacity) on the staff of a health service hospital<sup>17</sup> for the treatment of private patients of that practitioner<sup>18</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 National Health Service Act 2006 Sch 6 para 7.

4 As to the meaning of 'property' see PARA 4 note 9.

5 National Health Service Act 2006 Sch 6 para 8. As to supplementary provision in respect of this provision see s 217; and PARA 71. As to trusts see PARA 141. As to the meaning of 'health service' see PARA 10 note 3. See also the cases cited at PARA 109 note 5.

6 As to the meaning of 'hospital' see PARA 12 note 4.

7 As to the meaning of 'patient' see PARA 15 note 6.

8 National Health Service Act 2006 Sch 6 para 11(1)(a). Before a special health authority decides to make accommodation or services so available, it must consult organisations representative of the interests of persons likely to be affected by the decision: Sch 6 para 11(3). As to the meaning of 'person' see PARA 17 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

9 National Health Service Act 2006 Sch 6 para 11(1)(b). As to the recovery of charges see PARA 482.

10 As to the meaning of 'functions' see PARA 6 note 3.

11 National Health Service Act 2006 Sch 6 para 11(2)(a).

12 References in the National Health Service Act 2006 Sch 6 para 11 to a health service hospital include references to such a hospital within the meaning of the National Health Service (Wales) Act 2006 s 206 (see

PARA 21 note 7), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust: National Health Service Act 2006 Sch 6 para 11(5). As to the meaning of 'health service hospital' generally see PARA 21 note 7. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174.

13 National Health Service Act 2006 Sch 6 para 11(2)(b).

14 le under the National Health Service Act 2006 Sch 6 para 11(1): see the text to notes 6-9.

15 As to the meaning of 'medical practitioner' see PARA 84 note 7.

16 As to the meaning of 'dental practitioner' see PARA 87 note 7.

17 National Health Service Act 2006 Sch 6 para 11(4)(a).

18 National Health Service Act 2006 Sch 6 para 11(4)(b). As to permission for the use of facilities in private practice see PARA 747.

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**144. Information.**

Provision may be made by regulations<sup>1</sup> with respect to the recording of information by a special health authority<sup>2</sup>, and the furnishing of information by a special health authority to the Secretary of State<sup>3</sup>, another special health authority or a strategic health authority<sup>4</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations generally see PARA 9. As to such regulations see PARAS 145-154.

2 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

3 As to the Secretary of State see PARA 6 note 8.

4 National Health Service Act 2006 Sch 6 para 13. As to strategic health authorities see PARA 94 et seq.

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### **C. SPECIFIC AUTHORITIES**

#### **145. Health and Social Care Information Centre.**

A special health authority<sup>1</sup> called the Health and Social Care Information Centre has been established<sup>2</sup>. The authority consists of a chairman, not less than five nor more than seven members who are not officers of the authority in addition to the chairman, and not more than seven members who are officers of the authority<sup>3</sup>. The Secretary of State may pay to the chairman, and those members of the authority appointed by him, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>.

Subject to and in accordance with such directions as the Secretary of State may give, the authority must, so as to promote or secure the effective provision of services under the National Health Service Act 2006, perform such functions in connection with the collection, analysis, use and dissemination of information, such functions in connection with the issuing of administrative identification numbers, and such other functions, as the Secretary of State may direct<sup>5</sup>. The meetings and proceedings of the authority must be conducted in accordance with the statutory rules as to meetings and proceedings and with standing orders made by it<sup>6</sup>. The authority may, and if so directed by the Secretary of State must, appoint committees<sup>7</sup>, and may make arrangements for the exercise of any of its functions by a committee or sub-committee or by an officer of the authority<sup>8</sup>. The Public Bodies (Admission to Meetings) Act 1960 applies to the authority<sup>9</sup>.

The authority must make such reports to the Secretary of State as he may direct, and must furnish to him such information as he may from time to time require<sup>10</sup>. If the Secretary of State directs the authority to make an annual report to him for any particular year or for each year, the authority must present the report at a public meeting held not later than 30 days after the date on which the report was made<sup>11</sup>.

The authority is subject to investigation by the Health Service Commissioner for England<sup>12</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 Health and Social Care Information Centre (Establishment and Constitution) Order 2005, SI 2005/499, art 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the Health and Social Care Information Centre (Establishment and Constitution) Order 2005, SI 2005/499, and the Health and Social Care Information Centre Regulations 2005, SI 2005/500, have effect under the National Health Service Act 2006 s 28, Sch 6: see PARAS 136, 137, 142. The Health and Social Care Information Centre (Establishment and Constitution) Order 2005, SI 2005/499, and the Health and Social Care Information Centre Regulations 2005, SI 2005/500, apply in relation to England only: reg 1(2); Health and Social Care Information Centre (Establishment and Constitution) Order 2005, SI 2005/499, art 1(2). As to the meaning of 'England' see PARA 6 note 2.

3 See the Health and Social Care Information Centre (Establishment and Constitution) Order 2005, SI 2005/499, art 4. The chairman and non-officer members are appointed by the Secretary of State; and the officer members are appointed by the chairman, non-officer members and the chief executive of the authority: see the Health and Social Care Information Centre Regulations 2005, SI 2005/500, reg 2(1), (5). A vice chairman may be appointed: see reg 6. As to the tenure of office of the chairman and members see regs, 2, 5. As to disqualification for appointment see regs 3, 4. As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

- 4 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 5 Health and Social Care Information Centre (Establishment and Constitution) Order 2005, SI 2005/499, art 3.
- 6 See the Health and Social Care Information Centre Regulations 2005, SI 2005/500, reg 9, Schedule. As to the disability of the chairman and members in proceedings on account of pecuniary interest see reg 10.
- 7 See the Health and Social Care Information Centre Regulations 2005, SI 2005/500, reg 7. Committees may appoint sub-committees: see reg 7.
- 8 See the Health and Social Care Information Centre Regulations 2005, SI 2005/500, reg 8.
- 9 Health and Social Care Information Centre (Establishment and Constitution) Order 2005, SI 2005/499, art 6. As to the Public Bodies (Admission to Meetings) Act 1960 see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 40.
- 10 Health and Social Care Information Centre Regulations 2005, SI 2005/500, reg 11.
- 11 Health and Social Care Information Centre Regulations 2005, SI 2005/500, reg 12.
- 12 See the Health Service Commissioner for England (Special Health Authorities) (No 2) Order 2005, SI 2005/3428, art 2, Schedule; and PARA 643.

## **UPDATE**

### **145 Health and Social Care Information Centre**

NOTE 2--See also the Health and Social Care Information Centre (Transfer of Staff, Property and Liabilities) Order 2008, SI 2008/519.



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#### **146. Mental Health Act Commission.**

A special health authority<sup>1</sup> called the Mental Health Act Commission has been established<sup>2</sup>. The commission consists of such number of members as the Secretary of State<sup>3</sup> may from time to time determine, one of whom must be chairman<sup>4</sup>. The chairman and members are appointed by the Secretary of State<sup>5</sup>. The Secretary of State may pay to the chairman and members of the commission such remuneration as he may determine with the approval of the Treasury<sup>6</sup>.

Subject to and in accordance with such directions as the Secretary of State may give to it, the commission must, in addition to performing its functions specified in the Mental Health Act 1983<sup>7</sup>, perform on behalf of the Secretary of State the following specified functions, and such other functions as the Secretary of State may direct<sup>8</sup>. The specified functions are: (1) the appointment of registered medical practitioners and other persons for the purposes of the Mental Health Act 1983<sup>9</sup>; (2) the review of treatment<sup>10</sup>; (3) the general protection of patients detained under that Act<sup>11</sup>; and (4) the submission to the Secretary of State of proposals for the preparation and revision of a code of practice, in particular specifying treatment which gives rise to special concern<sup>12</sup>.

The Secretary of State must appoint a committee, known as the management board, which performs specified functions on behalf of the commission, and the commission may, and if directed by the Secretary of State must, appoint other committees<sup>13</sup>. Meetings and proceedings of the commission and the management board must be conducted in accordance with standing orders<sup>14</sup>. The Public Bodies (Admission to Meetings) Act 1960 applies to the commission<sup>15</sup>.

The commission is subject to investigation by the Health Service Commissioner for England<sup>16</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 Mental Health Act Commission (Establishment and Constitution) Order 1983, SI 1983/892, art 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the Mental Health Act Commission (Establishment and Constitution) Order 1983, SI 1983/892, and the Mental Health Act Commission Regulations 1983, SI 1983/894, have effect under the National Health Service Act 2006 s 28, Sch 6 (see PARAS 136, 137, 142), and the National Health Service (Wales) Act 2006 s 22, Sch 5 (see PARA 136 note 4). As to the requirement under the Mental Health Act 1983 for the establishment of the Mental Health Act Commission see s 121; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 413.

3 As to the Secretary of State see PARA 6 note 8.

4 Mental Health Act Commission (Establishment and Constitution) Order 1983, SI 1983/892, art 4. A vice-chairman may be appointed: see Mental Health Act Commission Regulations 1983, SI 1983/894, reg 6.

5 Mental Health Act Commission Regulations 1983, SI 1983/894, reg 2. As to the tenure of office of the chairman and members see regs 3, 4; and as to eligibility for reappointment see reg 5. As to disqualification for appointment see reg 9 (substituted by SI 1996/707; and amended by SI 2004/696). As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

6 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

7 See **MENTAL HEALTH** vol 30(2) (Reissue) PARA 413.

8 Mental Health Act Commission (Establishment and Constitution) Order 1983, SI 1983/892, art 3(1).

9 le under the Mental Health Act 1983 Pt IV (ss 56-64) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 554-555): see the Mental Health Act Commission (Establishment and Constitution) Order 1983, SI 1983/892, art 3(2)(a).

10 le under the Mental Health Act 1983 s 61 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 558): Mental Health Act Commission (Establishment and Constitution) Order 1983, SI 1983/892, art 3(2)(b).

11 le under the Mental Health Act 1983 s 120(1), (4) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 441): Mental Health Act Commission (Establishment and Constitution) Order 1983, SI 1983/892, art 3(2)(c).

12 le under the Mental Health Act 1983 s 118(1), (2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 410, 556): Mental Health Act Commission (Establishment and Constitution) Order 1983, SI 1983/892, art 3(2)(d).

13 See the Mental Health Act Commission Regulations 1983, SI 1983/894, reg 7 (amended by SI 1995/2630).

14 See the Mental Health Act Commission Regulations 1983, SI 1983/894, reg 8 (amended by SI 1995/2630).

15 Mental Health Act Commission (Establishment and Constitution) Order 1983, SI 1983/892, art 5 (added by SI 1998/1577). As to the Public Bodies (Admission to Meetings) Act 1960 see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 40.

16 See the Health Service Commissioner for England (Mental Health Act Commission) Order 1983, SI 1983/1114, art 2; and PARA 643. In relation to Wales the commission is subject to investigation by the Public Services Ombudsman for Wales: see PARA 655.

## UPDATE

### 146 Mental Health Act Commission

TEXT AND NOTES--The Mental Health Act Commission is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). The Care Quality Commission's main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Mental Health Commission and certain other public service inspectorates, in particular, specified functions under the Mental Health Act 1983: see the Health and Social Care Act 2008 Pt 1 Ch 4 (s 52, Sch 3). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-97), Schs 1-5 (in force in part); and the Care Quality Commission (Membership) Regulations 2008, SI 2008/2252.

SI 1983/892, SI 1983/894 revoked: Health and Social Care Act 2008 Sch 15 Pt 1.

NOTE 16--SI 1983/1114 revoked: SI 2009/462.

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#### **147. NHS Blood and Transplant.**

A special health authority<sup>1</sup> called NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) has been established<sup>2</sup>. The authority consists of a chairman, not more than eight members who are not officers of the authority in addition to the chairman, and not more than eight members who are officers of the authority<sup>3</sup>. The Secretary of State may pay to the chairman, and those members of the authority appointed by him, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>.

Subject to and in accordance with such directions as the appropriate authority<sup>5</sup> may give to the authority, the authority must so as to promote or secure the effective provision of health services<sup>6</sup> perform such functions in connection with: (1) collecting, screening, analysing, processing and supplying blood, blood products, plasma, stem cells and other tissues to the health service; (2) the preparation of blood components and reagents; (3) facilitating, providing and securing the provision of services to assist tissue and organ transplantation; (4) such other functions, as the appropriate authority may direct<sup>7</sup>. The meetings and proceedings of the authority must be conducted in accordance with the statutory rules as to meetings and proceedings and with standing orders made by it<sup>8</sup>. The authority may, and if so directed by the Secretary of State, must, appoint committees<sup>9</sup>, and may make arrangements for the exercise of any of its functions by a committee or sub-committee or by an officer of the authority<sup>10</sup>. The Public Bodies (Admission to Meetings) Act 1960 applies to the authority<sup>11</sup>.

The authority must make such reports to the appropriate authority in such manner and at such time as the appropriate authority may direct, and furnish to the appropriate authority such information as it may from time to time require<sup>12</sup>. If the appropriate authority directs the authority to make an annual report to it for any particular year or for each year, the authority must present the report at a public meeting held not later than 30 days after the date on which the report was made<sup>13</sup>.

The authority is subject to investigation by the Health Service Commissioner for England<sup>14</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (Establishment and Constitution) Order 2005, SI 2005/2529, art 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (Establishment and Constitution) Order 2005, SI 2005/2529, and the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) Regulations 2005, SI 2005/2531, have effect under the National Health Service Act 2006 s 28, Sch 6 (see PARAS 136, 137, 142), and the National Health Service (Wales) Act 2006 s 22, Sch 5 (see PARA 136 note 4).

3 See the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (Establishment and Constitution) Order 2005, SI 2005/2529, art 4. The chairman and non-officer members are appointed by the Secretary of State; and the officer members are appointed by the chairman, the non-officer members, and the chief executive of the authority: NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) Regulations 2005, SI 2005/2531, reg 2(1), (5). A vice chairman may be appointed: see reg 6. As to the tenure of office of the chairman and members see regs 2, 5. As to disqualification for appointment see regs 3, 4. As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

4 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 'Appropriate authority' means in relation to England, the Secretary of State; and in relation to Wales, the Welsh Ministers: NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (Establishment and Constitution) Order 2005, SI 2005/2529, art 1(2); Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

6 le services under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006.

7 NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (Establishment and Constitution) Order 2005, SI 2005/2529, art 3.

8 See the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) Regulations 2005, SI 2005/2531, reg 9, Schedule. As to the disability of the chairman and members in proceedings on account of pecuniary interest see reg 14.

9 See the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) Regulations 2005, SI 2005/2531, reg 7. Committees may appoint sub-committees: see reg 7.

10 See the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) Regulations 2005, SI 2005/2531, reg 8.

11 NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (Establishment and Constitution) Order 2005, SI 2005/2529, art 6. As to the Public Bodies (Admission to Meetings) Act 1960 see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 40.

12 NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) Regulations 2005, SI 2005/2531, reg 11.

13 NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) Regulations 2005, SI 2005/2531, reg 12.

14 See the Health Service Commissioner for England (Special Health Authorities) (No 2) Order 2005, SI 2005/3428, art 2, Schedule; and PARA 643. In relation to Wales the authority is subject to investigation by the Public Services Ombudsman for Wales: see PARA 655.

## UPDATE

### 147 NHS Blood and Transplant

NOTES--As to periodic reviews by the Care Quality Review Commission (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A) of regulated activities (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A.1) of NHS Blood and Transplant in England see Health and Social Care Act 2008 (NHS Blood and Transplant Periodic Review) Regulations 2009, SI 2009/3049.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(3) HEALTH SERVICE BODIES/(iv) Special Health Authorities/C. SPECIFIC AUTHORITIES/148. National Health Service Litigation Authority.

#### **148. National Health Service Litigation Authority.**

A special health authority<sup>1</sup> called the National Health Service Litigation Authority has been established<sup>2</sup>. The authority consists of a chairman, four members who are not officers of the authority, and the three persons holding the offices of chief officer, chief finance officer and clinical director of the authority<sup>3</sup>. The Secretary of State may pay to the chairman, and those members of the authority appointed by him, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>.

Subject to and in accordance with such directions as the Secretary of State may give, the authority must perform on behalf of the Secretary of State: (1) such of his functions in connection with the establishment and administration of a scheme for meeting liabilities of health service bodies<sup>5</sup>; (2) such of his appellate and other functions in connection with the decisions and functions of primary care trusts<sup>6</sup>; (3) such of his functions in connection with advice about and assistance with litigation or potential litigation which involves an NHS body<sup>7</sup>; and (4) such other functions, as the Secretary of State may direct<sup>8</sup>.

The meetings and proceedings of the authority must be conducted in accordance with the statutory rules as to meetings and proceedings and with standing orders made by the authority<sup>9</sup>. The authority may appoint committees<sup>10</sup>. The authority must make reports to the Secretary of State as he may direct, and furnish to him such information as he may require<sup>11</sup>. If the Secretary of State directs the authority to make an annual report to him for any particular year or for each year, it must present the report at a public meeting held not later than 30 days after the date on which the report was made<sup>12</sup>.

The authority is subject to investigation by the Health Service Commissioner for England<sup>13</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 National Health Service Litigation Authority (Establishment and Constitution) Order 1995, SI 1995/2800, art 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service Litigation Authority (Establishment and Constitution) Order 1995, SI 1995/2800, and the National Health Service Litigation Authority Regulations 1995, SI 1995/2801, have effect under the National Health Service Act 2006 s 28, Sch 6 (see PARAS 136, 137, 142), and the National Health Service (Wales) Act 2006 s 22, Sch 5 (see PARA 136 note 4).

3 National Health Service Litigation Authority (Establishment and Constitution) Order 1995, SI 1995/2800, art 4 (amended by SI 2002/2621). The chairman and non-officer members are appointed by the Secretary of State: National Health Service Litigation Authority Regulations 1995, SI 1995/2801, reg 2. A vice chairman may be appointed: see regs 9, 10. As to tenure of office see regs 3-6 (reg 5 amended by SI 1997/2991). As to disqualification for appointment see the National Health Service Litigation Authority Regulations 1995, SI 1995/2801, reg 7 (amended by SI 2000/696; SI 2000/2433; SI 2004/696; SI 2006/1722). As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

4 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 Ie a scheme under the National Health Service Act 2006 s 71: see PARA 656.

6 As to primary care trusts see PARA 111.

7 'NHS body' means a strategic health authority, a special health authority, an NHS trust, an NHS foundation trust, and a primary care trust: National Health Service Litigation Authority (Establishment and Constitution) Order 1995, SI 1995/2800, art 1(2) (substituted by SI 2005/1445). As to strategic health authorities see PARA 94 et seq. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174.

8 National Health Service Litigation Authority (Establishment and Constitution) Order 1995, SI 1995/2800, art 3 (substituted by SI 2005/1445).

9 See the National Health Service Litigation Authority Regulations 1995, SI 1995/2801, reg 13, Schedule. As to the disability of the chairman and members in proceedings on account of pecuniary interest see reg 14.

10 See the National Health Service Litigation Authority Regulations 1995, SI 1995/2801, reg 11. A committee may appoint sub-committees: see reg 11.

11 See the National Health Service Litigation Authority Regulations 1995, SI 1995/2801, reg 15.

12 See the National Health Service Litigation Authority Regulations 1995, SI 1995/2801, reg 16 (added by SI 1998/1576).

13 See the Health Service Commissioner for England (Special Health Authorities) Order 2005, SI 2005/251, art 2, Schedule; and PARA 643. In relation to Wales the authority is subject to investigation by the Public Services Ombudsman for Wales: see PARA 655.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(3) HEALTH SERVICE BODIES/(iv) Special Health Authorities/C. SPECIFIC AUTHORITIES/149. National Institute for Health and Clinical Excellence.

#### **149. National Institute for Health and Clinical Excellence.**

A special health authority<sup>1</sup> called the National Institute for Health and Clinical Excellence has been established<sup>2</sup>. The institute consists of a chairman, not less than eight or more than ten members who are not officers of the institute, and six members who are such officers<sup>3</sup>. The Secretary of State may pay to the chairman, and those members of the institute appointed by him, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>.

Subject to and in accordance with such directions as the Secretary of State may give, the institute must perform such functions in connection with the promotion of clinical excellence and the effective use of available resources in the health service, such functions in connection with the promotion of excellence in public health provision and promotion and in that connection the effective use of resources available in the health service and other available public funds, and such other functions, as the Secretary of State may direct<sup>5</sup>. The meetings and proceedings of the institute must be conducted in accordance with the statutory rules as to meetings and proceedings and with standing orders made by it<sup>6</sup>. The institute may appoint committees; and must, in accordance with directions given by the Secretary of State, appoint a committee known as the Partners Council to advise it in relation to such matters as it may refer to the council<sup>7</sup>. The institute may make arrangements for the exercise of any of its functions by a committee or sub-committee or by an officer of the institute<sup>8</sup>. The Public Bodies (Admission to Meetings) Act 1960 applies to the institute<sup>9</sup>.

The institute must make reports to the Secretary of State in such manner and at such time as he may direct, and must furnish to him such information as he may from time to time require<sup>10</sup>. If the Secretary of State directs the institute to make an annual report to him for any particular year or for each year, it must present the report at a public meeting held not later than 30 days after the date on which the report was made<sup>11</sup>.

The institute is subject to investigation by the Health Service Commissioner for England<sup>12</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 National Institute for Clinical Excellence (Establishment and Constitution) Order 1999, SI 1999/220, art 2 (amended by SI 2005/497). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Institute for Clinical Excellence (Establishment and Constitution) Order 1999, SI 1999/220, and the National Institute for Clinical Excellence Regulations 1999, SI 1999/260, have effect under the National Health Service Act 2006 s 28, Sch 6 (see PARAS 136, 137, 142), and the National Health Service (Wales) Act 2006 s 22, Sch 5 (see PARA 136 note 4).

3 See the National Institute for Clinical Excellence (Establishment and Constitution) Order 1999, SI 1999/220, art 4 (amended by SI 2002/1760; SI 2005/497). The chairman and non-officer members are appointed by the Secretary of State: National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 2(1). A vice chairman may be appointed: see reg 3. As to the tenure of office of the chairman and members see regs 2, 7 (amended by SI 2005/498). As to disqualification for appointment see the National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 5 (amended by SI 2004/696; SI 2005/498); and as to cessation of disqualification see the National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 6 (substituted by SI 2005/498). As to the appointment of chief officers see the National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 4 (amended by SI 1999/2218; SI 2002/1759; SI 2005/498). As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

- 4 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 5 National Institute for Clinical Excellence (Establishment and Constitution) Order 1999, SI 1999/220, art 3 (substituted by SI 2005/497). As to the provision by the National Institute for Health and Clinical Excellence of information to consultees during the process of appraisal by the institute of the clinical benefits and cost effectiveness of health care interventions with a view to their use in the National Health Service see *R (on the application of Eisai Ltd) v National Institute for Health and Clinical Excellence* [2008] EWCA Civ 438, [2008] All ER (D) 02 (May).
- 6 See the National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 11, Schedule. As to the disability of the chairman and members in proceedings on account of pecuniary interest see reg 12 (amended by SI 2005/498; SI 2005/2114).
- 7 See the National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 9 (amended by SI 2002/1759; SI 2005/498). A committee may appoint sub-committees: see the National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 9 (as so amended).
- 8 National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 10.
- 9 National Institute for Clinical Excellence (Establishment and Constitution) Order 1999, SI 1999/220, art 6 (added by SI 1999/2219). As to the Public Bodies (Admission to Meetings) Act 1960 see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 40.
- 10 National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 13.
- 11 National Institute for Clinical Excellence Regulations 1999, SI 1999/260, reg 14.
- 12 See the Health Service Commissioner for England (Special Health Authorities) Order 2005, SI 2005/251, art 2, Schedule; and PARA 643. In relation to Wales the institute is subject to investigation by the Public Services Ombudsman for Wales: see PARA 655.

## UPDATE

### 149 National Institute for Health and Clinical Excellence

NOTE 5--See also *R (on the application of Servier Laboratories Ltd) v National Institute for Health and Clinical Excellence* [2009] EWHC 281 (Admin), (2009) 108 BMLR 1, [2009] All ER (D) 217 (Feb) (National Institute for Health and Clinical Excellence under duty to take all reasonable steps to obtain permission to disclose information on which appraisal based) (reversed in part: [2010] EWCA Civ 346, [2010] All ER (D) 11 (Apr) (rejection of post hoc subgroup analysis inadequately explained)).



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### **150. National Patient Safety Agency.**

A special health authority<sup>1</sup> called the National Patient Safety Agency has been established<sup>2</sup>. The agency consists of a chairman, not less than seven and not more than nine members who are not officers of the agency, the chief executive of the agency, and up to five officers of the agency<sup>3</sup>. The Secretary of State may pay to the chairman, and those members of the agency appointed by him, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>.

Subject to and in accordance with such directions as the Secretary of State may give, the agency must perform: (1) such functions in connection with securing improvements in the quality of care and treatment provided for persons under the health service; (2) such functions in connection with the assessment of the performance and conduct of doctors and dentists engaged in the health service; (3) such functions in connection with hospital food, hospital cleaning and hospital design; and (4) such other functions, as the Secretary of State may direct<sup>5</sup>. The meetings and proceedings of the agency must be conducted in accordance with the statutory rules as to meetings and proceedings and with standing orders made by it<sup>6</sup>. The agency may, and, if so directed by the Secretary of State, must, appoint committees<sup>7</sup>; and may make arrangements for the exercise of any of its functions by a committee, a sub-committee or by an officer of the agency<sup>8</sup>. The Public Bodies (Admission to Meetings) Act 1960 applies to the agency<sup>9</sup>.

The agency must make reports to the Secretary of State in such manner and at such time as the Secretary of State may direct, and furnish to him such information as he may from time to time require<sup>10</sup>.

The agency is subject to investigation by the Health Service Commissioner for England<sup>11</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 National Patient Safety Agency (Establishment and Constitution) Order 2001, SI 2001/1743, art 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Patient Safety Agency (Establishment and Constitution) Order 2001, SI 2001/1743, and the National Patient Safety Agency Regulations 2001, SI 2001/1742, have effect under the National Health Service Act 2006 s 28, Sch 6: see PARAS 136, 137, 142. The National Patient Safety Agency (Establishment and Constitution) Order 2001, SI 2001/1743, and the National Patient Safety Agency Regulations 2001, SI 2001/1742, extend only to England: reg 1(2); National Patient Safety Agency (Establishment and Constitution) Order 2001, SI 2001/1743, art 1(2). As to the meaning of 'England' see PARA 6 note 2.

3 National Patient Safety Agency (Establishment and Constitution) Order 2001, SI 2001/1743, art 4 (amended by SI 2003/1077; SI 2005/504). The chairman and non-officer members are appointed by the Secretary of State: National Patient Safety Agency Regulations 2001, SI 2001/1742, reg 2(1). A vice chairman may be appointed: see reg 6. As to the tenure of office of the chairman and members see regs 2, 5. As to disqualification for appointment see reg 3 (amended by SI 2004/696; SI 2006/1722); and as to cessation of disqualification see the National Patient Safety Agency Regulations 2001, SI 2001/1742, reg 4 (amended by SI 2006/1722). As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

4 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 See the National Patient Safety Agency (Establishment and Constitution) Order 2001, SI 2001/1743, art 3 (amended by SI 2005/504).

6 See the National Patient Safety Agency Regulations 2001, SI 2001/1742, reg 9. As to the disability of the chairman and members in proceedings on account of pecuniary interest see reg 10.

7 See the National Patient Safety Agency Regulations 2001, SI 2001/1742, reg 7. A committee may appoint sub-committees: see reg 7.

8 See the National Patient Safety Agency Regulations 2001, SI 2001/1742, reg 8.

9 National Patient Safety Agency (Establishment and Constitution) Order 2001, SI 2001/1743, art 6. As to the Public Bodies (Admission to Meetings) Act 1960 see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 40.

10 National Patient Safety Agency Regulations 2001, SI 2001/1742, reg 11.

11 See the Health Service Commissioner for England (Special Health Authorities) Order 2005, SI 2005/251, art 2, Schedule; and PARA 643.

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### **151. National Treatment Agency.**

A special health authority<sup>1</sup> called the National Treatment Agency has been established<sup>2</sup>. The agency consists of a chairman, not less than three and not more than twelve members who are not officers of the agency, the chief executive of the agency, and not less than two and not more than four members who are officers of the agency<sup>3</sup>. The Secretary of State may pay to the chairman, and those members of the agency appointed by him, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>.

Subject to and in accordance with such directions as the Secretary of State may give, the agency must perform such functions in connection with the treatment of drug misusers, and such other functions, as the Secretary of State may direct<sup>5</sup>. The meetings and proceedings of the agency must be conducted in accordance with the statutory rules as to meetings and proceedings and with standing orders made by it<sup>6</sup>. The agency may, and, if so directed by the Secretary of State, must, appoint committees<sup>7</sup>; and may make arrangements for the exercise of any of its functions by a committee, a sub-committee or by an officer of the agency<sup>8</sup>. The Public Bodies (Admission to Meetings) Act 1960 applies to the agency<sup>9</sup>.

The agency must make reports to the Secretary of State in such manner and at such time as he may direct, and furnish to him such information as he may from time to time require<sup>10</sup>.

The agency is subject to investigation by the Health Service Commissioner for England<sup>11</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 National Treatment Agency (Establishment and Constitution) Order 2001, SI 2001/713, art 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Treatment Agency (Establishment and Constitution) Order 2001, SI 2001/713, and the National Treatment Agency Regulations 2001, SI 2001/715, have effect under the National Health Service Act 2006 s 28, Sch 6: see PARAS 136, 137, 142. The National Treatment Agency (Establishment and Constitution) Order 2001, SI 2001/713, and the National Treatment Agency Regulations 2001, SI 2001/715, extend to England only: reg 1(4); National Treatment Agency (Establishment and Constitution) Order 2001, SI 2001/713, art 1(3). As to the meaning of 'England' see PARA 6 note 2.

3 National Treatment Agency (Establishment and Constitution) Order 2001, SI 2001/713, art 4 (amended by SI 2003/1827). The chairman and non-officer members are appointed by the Secretary of State: see the National Treatment Agency Regulations 2001, SI 2001/715, reg 2(1). A vice chairman may be appointed: see reg 6. As to the tenure of office of the chairman and members see regs 2, 5. As to disqualification for appointment see reg 3 (amended by SI 2001/4044; SI 2004/696; SI 2006/1722); and as to cessation of disqualification see the National Treatment Agency Regulations 2001, SI 2001/715, reg 4 (amended by SI 2006/1722). As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

4 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 National Treatment Agency (Establishment and Constitution) Order 2001, SI 2001/713, art 3. As to controlled drugs see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 264 et seq.

6 See the National Treatment Agency Regulations 2001, SI 2001/715, reg 9. As to the disability of the chairman and members in proceedings on account of pecuniary interest see reg 10.

7 See the National Treatment Agency Regulations 2001, SI 2001/715, reg 7. A committee may appoint sub-committees: see reg 7.

8 See the National Treatment Agency Regulations 2001, SI 2001/715, reg 8.

9 National Treatment Agency (Establishment and Constitution) Order 2001, SI 2001/713, art 6. As to the Public Bodies (Admission to Meetings) Act 1960 see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 40.

10 National Treatment Agency Regulations 2001, SI 2001/715, reg 11.

11 See the Health Service Commissioner for England (Special Health Authorities) Order 2005, SI 2005/251, art 2, Schedule; and PARA 643.

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## **152. NHS Business Services Authority.**

A special health authority<sup>1</sup> called the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) has been established<sup>2</sup>. The authority consists of a chairman, not less than two and not more than five members who are not officers of the authority in addition to the chairman, and not more than six members who are such officers<sup>3</sup>. The Secretary of State may pay to the chairman, and those members of the authority appointed by him, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>.

Subject to and in accordance with such directions as the appropriate authority<sup>5</sup> may give to the authority, the authority must perform such functions in connection with:

- 90 (1) the administration of schemes relating to the provision of assistance with NHS charges; the European health insurance card; the NHS bursary scheme and the social care bursary scheme in England; the NHS injury benefit scheme and the NHS pension scheme<sup>6</sup>;
- 91 (2) the assessment of the performance of dentists providing services under general dental services contracts and personal dental services agreements<sup>7</sup>;
- 92 (3) assisting the Secretary of State in relation to specified Department of Health programmes, and specified special health authorities in the exercise of their functions, by the provision of business services and facilities and the supply of staff<sup>8</sup>;
- 93 (4) the collation and provision of information about primary dental services, pharmaceutical services and local pharmaceutical services<sup>9</sup>;
- 94 (5) the development and promotion of arrangements for the clinical governance of services provided under general dental services contracts and personal dental services agreements<sup>10</sup>;
- 95 (6) examining, checking and pricing of prescriptions for drugs, listed drugs, medicines and listed appliances supplied as part of pharmaceutical services or local pharmaceutical services<sup>11</sup>;
- 96 (7) the maintenance of records in respect of vocational training numbers allocated in England to dentists<sup>12</sup>;
- 97 (8) the management of security in the health service in England<sup>13</sup>;
- 98 (9) the prevention, detection and investigation of fraud, corruption and unlawful activities against or affecting the health service in England and the Secretary of State in relation to his responsibilities for the health service in England including investigations for the purposes of proceedings<sup>14</sup>;
- 99 (10) the prevention and detection of fraud in relation to general dental services contracts, personal dental services agreements, pharmaceutical services and local pharmaceutical services in Wales<sup>15</sup>;
- 100 (11) the processing of payments to providers of goods or services (or both) to the health service<sup>16</sup>;
- 101 (12) the procurement and supply of products and services for the purposes of the health service in England<sup>17</sup>;
- 102 (13) the provision of documentation relating to general dental services contracts and personal dental services agreements to the providers of those services<sup>18</sup>;
- 103 (14) refunding payments made in respect of charges for treatment for primary dental services<sup>19</sup>;

- 104 (15) the responsibility for all policy and operational matters relating to the matters within heads (8) and (9) above<sup>20</sup>;
- 105 (16) specified functions in relation to the rights and responsibilities of primary care trusts under general dental services contracts or personal dental services agreements<sup>21</sup>; and
- 106 (17) such other functions<sup>22</sup>,

as the appropriate authority may direct<sup>23</sup>.

The meetings and proceedings of the authority must be conducted in accordance with the statutory rules as to meetings and proceedings and with standing orders made by it<sup>24</sup>. The authority may, and, if so directed by the appropriate authority, must, appoint committees<sup>25</sup> and may make arrangements for the exercise of any of its functions by a committee, a sub-committee or by an officer of the authority<sup>26</sup>.

The authority must make reports to the appropriate authority in such manner and at such time as the appropriate authority may direct, and furnish to the appropriate authority such information as the appropriate authority may from time to time require<sup>27</sup>. If the appropriate authority directs the authority to make an annual report to it for any particular year or for each year, the authority must present the report at a public meeting held not later than 30 days after the date on which the report was made<sup>28</sup>.

The authority is subject to investigation by the Health Service Commissioner for England<sup>29</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005, SI 2005/2415, have effect under the National Health Service Act 2006 s 28, Sch 6 (see PARAS 136, 137, 142), and the National Health Service (Wales) Act 2006 s 22, Sch 5 (see PARA 136 note 4).

3 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 4 (amended by SI 2006/632). The chairman and non-officer members are appointed by the Secretary of State: NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005, SI 2005/2415, reg 2(1). The chairman and non-officer members appoint the member who is the chief executive of the authority: reg 2(4). The chairman, the non-officer members and the chief executive appoint the officer members: see reg 2(6). A vice chairman may be appointed: see reg 6. As to the tenure of office of the chairman and members see regs 2, 5. As to disqualification for appointment see reg 3 (amended by SI 2006/633); and as to cessation of disqualification see the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005, SI 2005/2415, reg 4 (amended by SI 2006/633). As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

4 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 'Appropriate authority' means in relation to England, the Secretary of State; and in relation to Wales, the Welsh Ministers: NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 1(2); Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

6 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(a) (art 3 substituted by SI 2006/632; NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(a) amended by SI 2007/1201). As to NHS charges see PARA 469 et seq. As to the NHS injury benefit scheme see PARA 744. As to the NHS pension scheme see PARA 717 et seq.

7 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(b) (as substituted: see note 6). As to general dental services contracts see PARA 278 et seq. As to personal dental services agreements see now the National Health Service Act 2006 s 107; and PARA 288.

8 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(c) (as substituted: see note 6). As to the Department of Health see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 463 et seq.

9 See the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(d) (as substituted: see note 6). As to primary dental services see PARA 277. As to pharmaceutical services see PARA 339 et seq.

10 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(e) (as substituted: see note 6).

11 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(f) (as substituted: see note 6).

12 See the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(g) (as substituted: see note 6).

13 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(h) (as substituted: see note 6).

14 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(i) (as substituted: see note 6). As to the Secretary of State's counter fraud functions and security management functions in relation to the health service see PARA 41.

15 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(j) (as substituted: see note 6).

16 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(k) (as substituted: see note 6).

17 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(l) (as substituted: see note 6).

18 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(m) (as substituted: see note 6).

19 See the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(n) (as substituted: see note 6).

20 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(o) (as substituted: see note 6).

21 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(p) (as substituted: see note 6). As to primary care trusts see PARA 111.

22 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3(q) (as substituted: see note 6).

23 NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, SI 2005/2414, art 3 (as substituted: see note 6).

24 See the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005, SI 2005/2415, reg 9, Schedule. As to the disability of the chairman and members in proceedings on account of pecuniary interest see reg 10.

25 See the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005, SI 2005/2415, reg 7. A committee may appoint sub-committees: see reg 7.

26 See the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005, SI 2005/2415, reg 8.

27 See the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005, SI 2005/2415, reg 11.

28 See the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005, SI 2005/2415, reg 12.

29 See the Health Service Commissioner for England (Special Health Authorities) Order 2006, SI 2006/305, art 2; and PARA 643. In relation to Wales the authority is subject to investigation by the Public Services Ombudsman for Wales: see PARA 655.



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### **153. NHS Institute for Innovation and Improvement.**

A special health authority<sup>1</sup> called the NHS Institute for Innovation and Improvement has been established<sup>2</sup>. The institute consists of a chairman, not less than six and not more than seven members who are not officers of the institute in addition to the chairman, and not more than six members who are officers of the institute including the chief executive<sup>3</sup>. The Secretary of State may pay to the chairman, and those members of the institute appointed by him, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>.

Subject to and in accordance with such directions as the Secretary of State may give, the institute must, in order to promote innovation and best practice in the delivery of services under the National Health Service Act 2006, perform such functions in connection with: (1) the promotion and use of new products and technology; (2) the development and delivery of new services; (3) the leadership development of both NHS staff and the chairmen and members of NHS bodies<sup>5</sup>; (4) the training and development of NHS staff; and (5) such other functions, as the Secretary of State may direct<sup>6</sup>. The meetings and proceedings of the institute must be conducted in accordance with the statutory rules as to meetings and proceedings and with standing orders made by it<sup>7</sup>. The institute may, and if so directed by the Secretary of State must, appoint committees<sup>8</sup>; and may make arrangements for the exercise of any of its functions by a committee, sub-committee, or an officer of the institute<sup>9</sup>. The Public Bodies (Admission to Meetings) Act 1960 applies to the institute<sup>10</sup>.

The institute must make such reports to the Secretary of State as he may direct, and must furnish to him such information as he may from time to time require<sup>11</sup>. If the Secretary of State directs the institute to make an annual report to him for any particular year or for each year, the institute must present the report at a public meeting held not later than 30 days after the date on which the report was made<sup>12</sup>.

The institute is subject to investigation by the Health Service Commissioner for England<sup>13</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005, SI 2005/1446, art 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005, SI 2005/1446, and the NHS Institute for Innovation and Improvement Regulations 2005, SI 2005/1447, have effect under the National Health Service Act 2006 s 28, Sch 6: see PARAS 136, 137, 142. The NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005, SI 2005/1446, and the NHS Institute for Innovation and Improvement Regulations 2005, SI 2005/1447, apply in relation to England only: reg 1(2); NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005, SI 2005/1446, art 1(2). As to the meaning of 'England' see PARA 6 note 2.

3 See the NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005, SI 2005/1446, art 4. The chairman and non-officer members are appointed by the Secretary of State: NHS Institute for Innovation and Improvement Regulations 2005, SI 2005/1447, reg 2(1). The chairman and the non-officer members appoint the member who is the chief executive of the institute (reg 2(4)); and the chairman, the non-officer members and the chief executive appoint the members who are officers of the institute (reg 2(5)). A vice chairman may be appointed: see reg 6. As to the tenure of office of the chairman and members see regs 2, 5. As to disqualification for appointment see regs 3, 4. As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

- 4 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 5 'NHS body' means a strategic health authority, a primary care trust, a special health authority, an NHS trust, and an NHS foundation trust: NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005, SI 2005/1446, art 1(3). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174.
- 6 See the NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005, SI 2005/1446, art 3.
- 7 See the NHS Institute for Innovation and Improvement Regulations 2005, SI 2005/1447, reg 9, Schedule. As to the disability of the chairman and members in proceedings on account of pecuniary interest see reg 10.
- 8 See the NHS Institute for Innovation and Improvement Regulations 2005, SI 2005/1447, reg 7. A committee may appoint sub-committees: see reg 7.
- 9 See the NHS Institute for Innovation and Improvement Regulations 2005, SI 2005/1447, reg 8.
- 10 NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005, SI 2005/1446, art 7. As to the Public Bodies (Admission to Meetings) Act 1960 see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 40.
- 11 See the NHS Institute for Innovation and Improvement Regulations 2005, SI 2005/1447, reg 11.
- 12 See the NHS Institute for Innovation and Improvement Regulations 2005, SI 2005/1447, reg 12.
- 13 See the Health Service Commissioner for England (Special Health Authorities) (No 2) Order 2005, SI 2005/3428, art 2, Schedule; and PARA 643.

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#### **154. NHS Professionals Special Health Authority.**

A special health authority<sup>1</sup> called the NHS Professionals Special Health Authority has been established<sup>2</sup>. The authority consists of a chairman, either four or five members who are not officers of the authority, the persons who for the time being hold the office of chief executive and director of finance of the authority, and either two or three other officers of the authority<sup>3</sup>. The Secretary of State may pay to the chairman, and those members of the authority appointed by him, such remuneration as he may determine with the approval of the Treasury<sup>4</sup>.

Subject to and in accordance with such directions as the Secretary of State may give to the authority, the authority must perform such functions in connection with the management of matters relating to the recruitment and use of temporary staff in the health service, and such other functions, as the Secretary of State may direct<sup>5</sup>. The meetings and proceedings of the authority must be conducted in accordance with the statutory rules as to meetings and proceedings and with standing orders made by the authority<sup>6</sup>. The authority may, and if so directed by the Secretary of State must, appoint committees<sup>7</sup>; and may make arrangements for the exercise of any of its functions by a committee, sub-committee or an officer of the authority<sup>8</sup>.

The authority must make such reports to the Secretary of State as he may direct, and must furnish to him such information as he may from time to time require<sup>9</sup>. If the Secretary of State directs the authority to make an annual report to him for any particular year or for each year, it must present the report at a public meeting held not later than 30 days after the date on which the report was made<sup>10</sup>.

The authority is subject to investigation by the Health Service Commissioner for England<sup>11</sup>.

1 As to the establishment and status of special health authorities and as to special health authorities in Wales see PARA 136. As to the exercise of functions of special health authorities see PARA 142.

2 NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003, SI 2003/3059, art 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003, SI 2003/3059, and the NHS Professionals Special Health Authority Regulations 2003, SI 2003/3060, have effect under the National Health Service Act 2006 s 28, Sch 6: see PARAS 136, 137, 142. The NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003, SI 2003/3059, and the NHS Professionals Special Health Authority Regulations 2003, SI 2003/3060, apply to England only: reg 1(2); NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003, SI 2003/3059, art 1(2). As to the meaning of 'England' see PARA 6 note 2.

3 NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003, SI 2003/3059, art 4(1) (art 4 substituted by SI 2008/558). An officer of the authority, other than the chief executive or director of finance, must not be appointed as a member of the authority if the number of members who are officers of the authority would exceed the number of members, other than the chairman, who are not officers of the authority: NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003, SI 2003/3059, art 4(2) (as so substituted). The chairman and non-officer members are appointed by the Secretary of State: NHS Professionals Special Health Authority Regulations 2003, SI 2003/3060, reg 2(1). The chairman and non-officer members appoint the members who are officers of the authority: reg 2(4). A vice chairman may be appointed: see reg 6. As to the tenure of office of the chairman and members see regs 2, 5. As to disqualification for appointment see reg 3 (amended by SI 2005/3491; SI 2004/696); and as to cessation of disqualification see the NHS Professionals Special Health Authority Regulations 2003, SI 2003/3060, reg 4. As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

- 4 See the National Health Service Act 2006 Sch 6 para 2; and PARA 138. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 5 NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003, SI 2003/3059, art 3.
- 6 See the NHS Professionals Special Health Authority Regulations 2003, SI 2003/3060, reg 9, Schedule. As to disability of the chairman and members in proceedings on account of pecuniary interest see reg 10.
- 7 See the NHS Professionals Special Health Authority Regulations 2003, SI 2003/3060, reg 7. A committee may appoint sub-committees: see reg 7.
- 8 See the NHS Professionals Special Health Authority Regulations 2003, SI 2003/3060, reg 8.
- 9 See the NHS Professionals Special Health Authority Regulations 2003, SI 2003/3060, reg 11.
- 10 See the NHS Professionals Special Health Authority Regulations 2003, SI 2003/3060, reg 12.
- 11 See the Health Service Commissioner for England (Special Health Authorities) Order 2005, SI 2005/251, art 2, Schedule; and PARA 643.

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## **(v) National Health Service Trusts**

### ***A. ESTABLISHMENT***

#### **155. Establishment and constitution.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> establish bodies, called National Health Service trusts, or 'NHS trusts', to provide goods and services for the purposes of the health service<sup>3</sup>. No NHS trust order may be made until after the completion of such consultation as may be prescribed<sup>4</sup>. An NHS trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>5</sup>; and an NHS trust's property<sup>6</sup> must not be regarded as property of, or property held on behalf of, the Crown<sup>7</sup>.

Each NHS trust is a body corporate<sup>8</sup>. Each NHS trust has a board of directors consisting of a chairman appointed by the Secretary of State<sup>9</sup>, and executive and non-executive directors<sup>10</sup>. The Secretary of State may by regulations<sup>11</sup> make provision with respect to: (1) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they cease to hold, or may be removed from, office or may be suspended from performing the functions<sup>12</sup> of the office)<sup>13</sup>; (2) the persons<sup>14</sup> by whom the directors and any of the officers<sup>15</sup> must be appointed and the manner of their appointment<sup>16</sup>; (3) the maximum and minimum numbers of the directors<sup>17</sup>; (4) the circumstances in which a person who is not an employee of the NHS trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director<sup>18</sup>; (5) the proceedings of the NHS trust (including the validation of proceedings in the event of a vacancy or defect in appointment)<sup>19</sup>; (6) the appointment, constitution and exercise of functions by committees and sub-committees of the NHS trust (whether or not consisting of or including any members of the board)<sup>20</sup>; and (7) in particular, cases where the post of any officer of an NHS trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person<sup>21</sup>.

An NHS trust must pay: (a) to the chairman and any non-executive director of the NHS trust remuneration of an amount determined<sup>22</sup> by the Secretary of State, not exceeding such amount as may be approved by the Treasury<sup>23</sup>; (b) to the chairman and any non-executive director of the NHS trust such travelling and other allowances as may be determined by the Secretary of State with the approval of the Treasury<sup>24</sup>; (c) to any member of a committee or sub-committee of the NHS trust who is not also a director such travelling and other allowances as may be so determined<sup>25</sup>. If an NHS trust so determines in the case of a person who is or has been a chairman of the NHS trust, the NHS trust must pay such pension, allowances or gratuities to or in respect of him as may be determined by the Secretary of State with the approval of the Treasury<sup>26</sup>.

The fixing of the seal of an NHS trust must be authenticated by the signature of the chairman or of some other person authorised (whether generally or specifically) by the NHS trust for that purpose<sup>27</sup>, and of one other director<sup>28</sup>. A document purporting to be duly executed under the seal of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so executed<sup>29</sup>; and a document purporting to be signed on behalf of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so signed<sup>30</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 Such an order is known as an 'NHS trust order': National Health Service Act 2006 s 25(2). As to NHS trust orders see further PARA 156. As to the making of orders generally see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478 (see PARA 173) has effect under the National Health Service Act 2006 s 25. Orders which relate to individual local NHS trusts are not recorded in this work.

3 National Health Service Act 2006 s 25(1). As to NHS trusts in Wales see the National Health Service (Wales) Act 2006 ss 18-21, Sch 3. As to the meaning of 'health service' see PARA 10 note 3. As to financial provision in respect of NHS trusts see PARA 513 et seq. As to applications by NHS trusts to become NHS foundation trusts see PARA 193. If authorisation is given to an NHS trust to become an NHS foundation trust an order under the National Health Service Act 2006 s 25(1) is revoked: see s 36(1)(c); and PARA 196. An NHS trust is a public authority for the purposes of the Freedom of Information Act 2000: see s 3, Sch 1 Pt III (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(f)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

4 National Health Service Act 2006 s 25(3). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the consultation requirements see the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996, SI 1996/653.

5 National Health Service Act 2006 Sch 4 para 2(1). As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

6 As to the meaning of 'property' see PARA 4 note 9.

7 National Health Service Act 2006 Sch 4 para 2(2).

8 National Health Service Act 2006 Sch 4 para 1. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**.

9 National Health Service Act 2006 Sch 4 para 3(1)(a). As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820. The chairman and non-executive members of an NHS trust are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1, Sch 1 Pt III (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 52, 54(c)); and **PARLIAMENT** vol 78 (2010) PARA 905. As to the appointment of a vice chairman see PARA 161.

10 National Health Service Act 2006 Sch 4 para 3(1)(b). This provision is subject to Sch 4 para 7(2) (see PARA 156): Sch 4 para 3(2). Subject to any provision made by regulations under Sch 4 para 4(1)(d) (see the text to note 18), an 'executive director' is a director who is an employee of the NHS trust, and a 'non-executive director' is a director who is not an employee of the NHS trust: Sch 4 para 3(3), (4). See also note 9. As to the protection from liability of directors of NHS trusts see PARA 82.

11 As to the making of regulations generally see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024 (see PARAS 157-163) have effect under the National Health Service Act 2006 Sch 4 para 4.

12 As to the meaning of 'functions' see PARA 6 note 3.

13 National Health Service Act 2006 Sch 4 para 4(1)(a).

14 As to the meaning of 'person' see PARA 17 note 2.

15 As to the meaning of 'officer' see PARA 28 note 5.

16 National Health Service Act 2006 Sch 4 para 4(1)(b).

17 National Health Service Act 2006 Sch 4 para 4(1)(c).

18 National Health Service Act 2006 Sch 4 para 4(1)(d).

19 National Health Service Act 2006 Sch 4 para 4(1)(e).

20 National Health Service Act 2006 Sch 4 para 4(1)(f).

- 21 National Health Service Act 2006 Sch 4 para 4(2).
- 22 Different determinations may be made under the National Health Service Act 2006 Sch 4 para 11(1) or 11(2) (see the text to notes 23-26) in relation to different cases or descriptions of cases: Sch 4 para 11(3).
- 23 National Health Service Act 2006 Sch 4 para 11(1)(a). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 24 National Health Service Act 2006 Sch 4 para 11(1)(b). See also note 22.
- 25 National Health Service Act 2006 Sch 4 para 11(1)(c). See also note 22.
- 26 National Health Service Act 2006 Sch 4 para 11(2). See also note 22.
- 27 National Health Service Act 2006 Sch 4 para 33(1)(a).
- 28 National Health Service Act 2006 Sch 4 para 33(1)(b).
- 29 National Health Service Act 2006 Sch 4 para 33(2).
- 30 National Health Service Act 2006 Sch 4 para 33(3).

## **UPDATE**

### **155 Establishment and constitution**

NOTE 3--See also the North Wales National Health Service Trust (Establishment) Order 2008, SI 2008/1648; and the Public Health Wales National Health Service Trust (Establishment) Order 2009, SI 2009/2058; and PARA 595.

NOTE 21--See the Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009, SI 2009/1385.

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## **156. NHS trust orders.**

The first NHS trust order<sup>1</sup> made in relation to any NHS trust<sup>2</sup> must specify: (1) the name of the NHS trust<sup>3</sup>; (2) the functions<sup>4</sup> of the NHS trust<sup>5</sup>; (3) the number of executive directors and non-executive directors<sup>6</sup>; (4) where the NHS trust has a significant teaching commitment<sup>7</sup>, a provision to secure the inclusion in the non-executive directors of a person appointed from a university<sup>8</sup> with a medical or dental school specified in the order<sup>9</sup>; (5) the operational date of the NHS trust<sup>10</sup>; and (6) if a scheme is to be made for the transfer of staff to the NHS trust<sup>11</sup>, the primary care trusts<sup>12</sup>, special health authority<sup>13</sup> or local health board<sup>14</sup> which is to make the scheme<sup>15</sup>.

An NHS trust order must specify the accounting date of the NHS trust<sup>16</sup>. An NHS trust order may require a strategic health authority<sup>17</sup>, special health authority, primary care trust or local health board to make staff, premises and other facilities<sup>18</sup> available to an NHS trust pending the transfer or appointment of staff to or by the NHS trust and the transfer of premises or other facilities to the NHS trust<sup>19</sup>.

An NHS trust order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust and, during the period between that earlier date and the operational date, the NHS trust has such limited functions for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order<sup>20</sup>. If an NHS trust order makes such provision: (a) then, at any time during the period between the earlier date and the operational date, the NHS trust must be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive directors have not yet been appointed<sup>21</sup>; and (b) the order may require a strategic health authority, special health authority or local health board to discharge such liabilities<sup>22</sup> of the NHS trust as may be incurred during the period between the earlier date and the operational date<sup>23</sup>, and are of a description specified in the order<sup>24</sup>.

1 As to the meaning of 'NHS trust order' see PARA 155 note 2.

2 As to NHS trusts see PARA 155.

3 National Health Service Act 2006 Sch 4 para 5(1)(a).

4 As to the meaning of 'functions' see PARA 6 note 3.

5 National Health Service Act 2006 Sch 4 para 5(1)(b). The functions which may be specified in an NHS trust order include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified: Sch 4 para 5(2). As to the meaning of 'goods' see PARA 12 note 7. As to the meaning of 'hospital' see PARA 12 note 4.

6 National Health Service Act 2006 Sch 4 para 5(1)(c). As to the meanings of 'executive director' and 'non-executive director' see PARA 155 note 10.

7 An NHS trust has a significant teaching commitment in the following cases: (1) if the NHS trust is established to provide services at a hospital or other establishment or facility which, in the opinion of the Secretary of State, has a significant teaching and research commitment (National Health Service Act 2006 Sch 4 para 5(3)(a)); and (2) in any other case, if the Secretary of State so provides in the order (Sch 4 para 5(3)(b)).

8 As to the meaning of 'university' see PARA 22 note 4.



9 National Health Service Act 2006 Sch 4 para 5(1)(d). In a case where the order contains such a provision and a person who is being considered for appointment by virtue of that provision is employed by the university in question, and would also, apart from this provision, be regarded as employed by the NHS trust, his employment by the NHS trust must be disregarded in determining whether, if appointed, he will be a non-executive director of the NHS trust: Sch 4 para 5(4).

10 National Health Service Act 2006 Sch 4 para 5(1)(e). The 'operational date' of the NHS trust is the date on which it will begin to undertake the whole of the functions conferred on it: Sch 4 para 5(5).

11 Is a scheme under the National Health Service Act 2006 Sch 4 para 8: see PARA 164.

12 As to primary care trusts see PARA 111.

13 As to the special health authorities see PARA 136.

14 As to the meaning of 'local health board' see PARA 17 note 13.

15 National Health Service Act 2006 Sch 4 para 5(1)(f).

16 National Health Service Act 2006 Sch 4 para 5(6).

17 As to strategic health authorities see PARA 94 et seq.

18 As to the meaning of 'facilities' see PARA 12 note 7.

19 National Health Service Act 2006 Sch 4 para 6(1). An NHS trust order making provision under Sch 4 para 6(1) may make provision with respect to the time when the functions of the strategic health authority, special health authority, primary care trust or local health board under the provision are to come to an end: Sch 4 para 6(2).

20 National Health Service Act 2006 Sch 4 para 7(1).

21 National Health Service Act 2006 Sch 4 para 7(2). As to the appointment of directors see PARA 157.

22 In the absence of a specific reference in the legislation, criminal liabilities are not transferred: see *R v Pennine Acute Hospitals NHS Trust (formerly Rochdale Healthcare NHS Trust)* [2003] EWCA Crim 3436, [2004] 1 All ER 1324.

23 National Health Service Act 2006 Sch 4 para 7(3)(a).

24 National Health Service Act 2006 Sch 4 para 7(3)(b).

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### **157. Appointment of directors.**

Save in the case of an approved mental health NHS trust<sup>1</sup> or a care trust<sup>2</sup>, the maximum number of directors of an NHS trust is twelve, excluding the chairman<sup>3</sup>; and an NHS trust must have no more than seven non-executive directors (excluding the chairman), and no more than five executive directors<sup>4</sup>. The non-executive directors of an NHS trust are appointed by the Secretary of State<sup>5</sup>, and the executive directors of an NHS trust are appointed by the relevant committee<sup>6</sup>.

The executive directors of an NHS trust must include the chief officer of the trust<sup>7</sup>, the chief finance officer of the trust<sup>8</sup>, a medical or dental practitioner<sup>9</sup> and a nurse or midwife registered on the register maintained<sup>10</sup> by the Nursing and Midwifery Council<sup>11</sup>. In addition to such directors, the executive directors of an approved mental health NHS trust must include a chief officer with responsibility for high security psychiatric services<sup>12</sup>; and the executive directors of a care trust must include a person with experience of the health-related functions of local authorities<sup>13</sup>. A person who: (1) is not an employee of an NHS trust but holds a post in a university<sup>14</sup> with a medical or dental school, and also works for the trust<sup>15</sup>; or (2) is seconded from his employers to work for the trust<sup>16</sup>; or (3) is, in relation to a care trust, a person with experience of the health-related functions of local authorities<sup>17</sup>; is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director of the trust<sup>18</sup>.

1 In the case of an approved mental health NHS trust the maximum number of directors of the trust is 14, excluding the chairman, and the trust must have no more than seven non-executive directors (excluding the chairman) and no more than seven executive directors: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 2(3) (reg 2 substituted by SI 1998/1975; National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 2(3) added by SI 2000/2434). 'Approved mental health NHS trust' means an NHS trust whose functions include the provision of high security psychiatric services and other services for mentally ill patients and which is approved for the former purpose by the Secretary of State: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 1(2) (definition added by SI 2000/2434). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, have effect under the National Health Service Act 2006 s 25(4), Sch 4 para 4: see PARA 156. As to NHS trusts see PARA 155. As to the meanings of 'executive director' and 'non-executive director' see PARA 155 note 10. As to the meaning of 'functions' see PARA 6 note 3. As to the meaning of 'high security psychiatric services' see PARA 12. As to the Secretary of State see PARA 6 note 8.

2 In the case of a care trust the maximum number of directors is 14, excluding the chairman, and the number of executive directors must not exceed seven nor the number of non-executive directors: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 2(4) (reg 2 as substituted (see note 1); reg 2(4) added by SI 2001/3786). 'Care trust' means an NHS trust designated as a care trust pursuant to the National Health Service Act 2006 s 77(1) (see PARA 235): National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 1(2) (definition added by SI 2001/3786); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). Unless the context otherwise requires, 'NHS trust' includes a care trust: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 1(2) (definition added by SI 2001/3786).

3 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 2(1) (reg 2 as substituted (see note 1); reg 2(1), (2) amended by SI 2000/2434, SI 2001/3786). This provision is expressed to be subject to the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9B(2): see PARA 159.

4 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 2(2) (as substituted and amended: see note 3). This provision is expressed to be subject to reg 9B(2): see PARA 159. Where more than one person is appointed jointly to a post in an NHS trust which qualifies the holder for executive directorship or in relation to which an executive director is to be appointed, those persons become or

are appointed an executive director jointly, and count for the purposes of reg 2 as one person: reg 6. As to the protection from liability of directors of NHS trusts see PARA 82.

5 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 3(1) (reg 3 substituted by SI 2001/3786). The non-executive directors of a care trust must include at least one member of each relevant local authority, appointed by the Secretary of State following nomination by that authority: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 4(5) (reg 4(4), (5) added by SI 2001/3786). 'Relevant local authority' means a local authority which is a party to LA delegation arrangements with the NHS trust: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 1(2) (definition added by SI 2001/3786). As to the meaning of 'LA delegation arrangements' see PARA 235 note 3. As to the meaning of 'local authority' see PARA 17 note 3. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

6 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 3(2) (as substituted: see note 5). 'Relevant committee' means a committee of an NHS trust appointed under either reg 17 or 18 (see PARA 162) whichever is appropriate: reg 1(2). As to tenure of office, termination of office, and disqualification for office see PARAS 158-160.

7 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 4(1)(a). As to the appointment of staff see PARA 164.

8 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 4(1)(b).

9 As to the meaning of 'medical practitioner' see PARA 84 note 7. As to the meaning of 'dental practitioner' see PARA 87 note 7.

10 lie under the Nursing and Midwifery Order 2001, SI 2002/253, art 5: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 717.

11 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 4(1)(c) (amended by SI 2002/881; SI 2004/1771). This provision does not apply in the case of a trust which does not provide services directly to patients, or whose principal function is to provide ambulance or patient transport services: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 4(2).

12 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 4(3) (added by SI 2000/2434).

13 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 4(4) (as added: see note 5). As to the meaning of 'health related functions' see PARA 233 note 8.

14 As to the meaning of 'university' see PARA 22 note 4.

15 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 5(a).

16 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 5(b).

17 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 5(c) (added by SI 2001/3786).

18 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 5.

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### **158. Tenure of office.**

Subject to the provisions relating to termination of office<sup>1</sup>, the chairman and non-executive directors<sup>2</sup> of an NHS trust<sup>3</sup> are appointed for such period not exceeding four years as the Secretary of State<sup>4</sup> may specify on making the appointment<sup>5</sup>.

The tenure of office of executive directors<sup>6</sup>, other than the chief officer and chief finance officer, is for such period as the relevant committee<sup>7</sup> may specify on making the appointment<sup>8</sup>, subject to the condition that an executive director who is not the chief officer or the chief finance officer, holds office for as long as he holds a post in the trust<sup>9</sup>. An executive director who is the chief officer or the chief finance officer, holds office for as long as he holds that post in the trust<sup>10</sup>. If the relevant committee is of the opinion that it is not in the interests of the NHS trust that an executive director of an NHS trust, other than the chief officer or chief finance officer, should continue to hold office as director, the relevant committee must forthwith terminate his tenure of office<sup>11</sup>. If an executive director is suspended from his post in the trust he must be suspended from performing his functions as director for the period of his suspension<sup>12</sup>.

An executive director, other than the chief officer or chief finance officer of an NHS trust, may resign his office at any time during the period for which he was appointed by giving notice in writing<sup>13</sup> to the relevant committee<sup>14</sup>.

An executive director of an NHS trust, other than the chief officer and the chief finance officer, is, on the termination of the period of his tenure of office, eligible for reappointment<sup>15</sup>.

1    le subject to the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9: see PARA 159.

2    As to the meaning of 'non-executive director' see PARA 155 note 10.

3    As to the meaning of 'NHS trust' see PARA 157 note 2. As to NHS trusts generally see PARA 155. As to the appointment of directors see PARA 157.

4    As to the Secretary of State see PARA 6 note 8. As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58; and PARA 820.

5    National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 7(1) (amended by SI 1996/1755; SI 2001/3786). However, a non-executive director of a care trust who is a person mentioned in the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 4(5) (see PARA 157) is appointed for a period not exceeding his remaining term of office as a member of the local authority: reg 7(1A) (added by SI 2001/3786).

6    As to the meaning of 'executive director' see PARA 155 note 10.

7    As to the meaning of 'relevant committee' see PARA 157 note 6.

8    National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 7(2) (amended by SI 1996/1755). This provision is expressed to be subject to the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 8: see the text to notes 9-14.

9    See the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 8(1)(a).

10   See the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 8(1)(b).

- 11 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 8(2) (amended by SI 1996/1755; SI 2001/3786). In the case of a care trust, the relevant committee must not terminate the tenure of office of a director under the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 8(2) unless it has consulted each relevant local authority: reg 8(2A) (added by SI 2001/3786). As to the meaning of 'relevant local authority' see PARA 157 note 5.
- 12 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 8(3).
- 13 As to the meaning of 'writing' see PARA 7 note 2.
- 14 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 8(4).
- 15 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 10(2).

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### **159. Termination of office of chairman and non-executive directors.**

The chairman or a non-executive director<sup>1</sup> of an NHS trust<sup>2</sup> may resign his office at any time during the period for which he was appointed by giving notice in writing<sup>3</sup> to the Secretary of State<sup>4</sup>. Where during his period of directorship a non-executive director of a trust is appointed chairman of the trust, his tenure of office as non-executive director terminates when his appointment as chairman takes effect<sup>5</sup>. Where a person appointed as a non-executive director from a university<sup>6</sup> ceases to hold a post in the university in question the Secretary of State must terminate his appointment as non-executive director<sup>7</sup>.

If the Secretary of State is of the opinion that it is not in the interests of the health service<sup>8</sup> for a person appointed as a chairman or non-executive director of an NHS trust to continue to hold that office, the Secretary of State may forthwith terminate that person's tenure of office<sup>9</sup>. If a chairman or non-executive director of an NHS trust has not attended a meeting of the trust for a period of three months<sup>10</sup> the Secretary of State must forthwith terminate his tenure of office unless the Secretary of State is satisfied that<sup>11</sup> the absence was due to a reasonable cause<sup>12</sup>, and the chairman or non-executive director will be able to attend meetings of the trust within such period as the Secretary of State considers reasonable<sup>13</sup>. If it appears to the Secretary of State that the chairman or non-executive director of an NHS trust has failed to comply with the provisions relating to the disclosure of a pecuniary interest<sup>14</sup>, he may forthwith terminate that person's tenure of office<sup>15</sup>.

Where a person has been appointed the chairman or non-executive director of an NHS trust, if he becomes disqualified for appointment<sup>16</sup> the Secretary of State must forthwith notify him in writing of such disqualification<sup>17</sup>; or if it comes to the notice of the Secretary of State that at the time of that person's appointment he was so disqualified, he must forthwith declare that the person was not duly appointed and so notify him in writing<sup>18</sup>. Upon receipt of any such notification, the chairman or non-executive director's tenure of office, if any, is terminated and he must cease to act as chairman or non-executive director<sup>19</sup>.

Where a relevant local authority notifies the Secretary of State in writing that they no longer wish a relevant director<sup>20</sup> to continue as a director of the care trust the Secretary of State must forthwith terminate the tenure of office of that director<sup>21</sup>. If the chairman or a non-executive director of a care trust who is a member of a local authority<sup>22</sup> is suspended from being a member of that authority<sup>23</sup> he must be suspended from performing his functions as a member of the care trust for the period of the suspension<sup>24</sup>.

Subject to the provisions relating to disqualification for office<sup>25</sup>, the chairman or non-executive director of an NHS trust is, on the termination of the period of his tenure of office, eligible for reappointment<sup>26</sup>.

The Secretary of State may suspend an appointee<sup>27</sup> from performing the appointee's functions as chairman or director while the Secretary of State considers whether to remove<sup>28</sup> the person from office<sup>29</sup>, or the person is disqualified for appointment<sup>30</sup> or was so disqualified at the time of appointment<sup>31</sup>. A period of suspension must not exceed six months<sup>32</sup>, and the Secretary of State may at any time review a suspension and must review a suspension after three months if so requested in writing by the person who has been suspended<sup>33</sup>. In relation to any NHS trust in which the chairman of the trust is so suspended<sup>34</sup>, if a vice-chairman has been appointed<sup>35</sup> that appointment ceases to have effect from the time that the chairman is suspended<sup>36</sup>. The Secretary of State may, for the purpose of enabling the proceedings of the trust<sup>37</sup> to be

conducted in the absence of the chairman, appoint a non-executive director of the trust to be vice-chairman<sup>38</sup>. Any person so appointed may at any time resign from the office of vice-chairman by giving notice in writing to the Secretary of State<sup>39</sup>. The Secretary of State may terminate a person's appointment as vice-chairman if the Secretary of State is of the opinion that it would be in the best interests of the trust for another non-executive director of the trust to be vice-chairman<sup>40</sup>.

- 1 As to the meaning of 'non-executive director' see PARA 155 note 10.
- 2 As to the meaning of 'NHS trust' see PARA 157 note 2. As to NHS trusts generally see PARA 155.
- 3 As to the meaning of 'writing' see PARA 7 note 2.
- 4 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(1) (amended by SI 1996/1755). As to the appointment of the chairman see PARA 155. As to the appointment of directors see PARA 157. As to tenure of office see PARA 158.
- 5 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(2).
- 6 *Ie* pursuant to the National Health Service Act 2006 Sch 4 para 5(1)(d): see PARA 156.
- 7 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(7); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).
- 8 As to the meaning of 'health service' see PARA 10 note 3.
- 9 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(3) (substituted by SI 1996/1755; and amended by SI 2001/3786). In the case of a care trust the Secretary of State must not terminate the tenure of office of a chairman or non-executive director under the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(3), 9(4) (see the text to notes 10-13) or 9(6) (see the text to notes 14-15) unless he has consulted each relevant local authority: reg 9(8) (reg 9(8)-(11) added by SI 2001/3786). As to the meaning of 'care trust' see PARA 157 note 2. As to the meaning of 'relevant local authority' see PARA 157 note 5.
- 10 As to the meaning of 'month' see PARA 28 note 16.
- 11 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(4) (amended by SI 1997/2990; SI 2001/3786). This provision is expressed to be subject to the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(8): see note 9.
- 12 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(4)(a).
- 13 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(4)(b).
- 14 *Ie* the provisions of the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 20: see PARA 163.
- 15 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(6) (amended by SI 2001/3786). This provision is expressed to be subject to the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(8): see note 9.
- 16 *Ie* under the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11: see PARA 160.
- 17 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(5)(a) (reg 9(5)(a), (b) amended by SI 1996/1755).
- 18 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(5)(b) (as amended: see note 17).
- 19 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(5).
- 20 'Relevant director' means a director nominated by the authority in accordance with the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 4(5) (see PARA 157): reg 9(10) (as added: see note 9).

21 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(9) (as added: see note 9).

22 As to the meaning of 'local authority' see PARA 17 note 3.

23 Ie by virtue of a decision of a case tribunal made under the Local Government Act 2000 s 79: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 283.

24 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(11) (as added: see note 9).

25 Ie subject to the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11: see PARA 160.

26 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 10(1).

27 'Appointee' in relation to an NHS trust means the chairman or a non-executive director of the trust: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 1(2) (definition added by SI 2008/1269).

28 Ie under the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9(3) (see the text to notes 8-9) or (6) (see the text to notes 14-15).

29 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9A(1)(a) (regs 9A-9D added by SI 2008/11269). The National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, regs 9A-9D come into force on 16 June 2008: see the Primary Care Trusts and National Health Service Trusts (Membership and Procedure) Amendment Regulations 2008, SI 2008/1269, reg 1(1).

30 Ie under the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11: see PARA 160.

31 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9A(1)(b) (as added: see note 29). The Secretary of State must notify a person suspended under reg 9A(1) of the decision to suspend, and the decision takes effect upon receipt of such notification: reg 9A(2) (as so added). In relation to any NHS trust in which an appointee of the trust is suspended under reg 9A: (1) each of the references in reg 2 (maximum number of directors: see PARA 157) to the maximum number of directors or non-executive directors has effect in respect of that trust as if the number were increased by the number of appointees so suspended (reg 9B(1) (as so added)); (2) references in the Schedule paras 2(2), 3(5), (5A) (see PARA 163) to the whole number of directors means the whole number of directors excluding any directors who are suspended under reg 9A; and the references in the Schedule para 2(3) (see PARA 163) to a director means a director other than a director who is suspended under reg 9A (reg 9B(2) (as so added)).

In relation to any NHS trust in which an appointee of the trust is suspended under reg 9A, and which was established by an establishment order made before 6 May 2008 (being the date on which the Primary Care Trusts and National Health Service Trusts (Membership and Procedure) Amendment Regulations 2008, SI 2008/1269, were made), the provisions in the trust's establishment order specifying the number of non-executive directors of the trust has effect as if the number were increased by the number of appointees so suspended: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9D(1), (2) (as so added). 'Establishment order' means an order made under the National Health Service and Community Care Act 1990 s 5(1) (repealed) or the National Health Service Act 2006 s 25(1) (see PARA 155): National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9D(3)(a) (as so added). The reference to the number of non-executive directors relates to the number of non-executive directors specified in the establishment order, whether or not expressed to be including the chairman: reg 9D(3)(b) (as so added).

32 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9A(3) (as added: see note 29).

33 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9A(4) (as added: see note 29). On reviewing a suspension, the Secretary of State may revoke the suspension, in which case it ceases to have effect, or suspend the appointee from performing the appointee's functions as chairman or director for a period of not more than six months from the expiry of the current period of suspension: reg 9A(5) (as so added).

34 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9C(1) (as added: see note 29).



35 lie under the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 13: see PARA 161.

36 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9C(2) (as added: see note 29).

37 As to proceedings see PARA 163.

38 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9C(3) (as added: see note 29). The appointment of a vice-chairman must be for such a period, not exceeding the shorter of the period for which the chairman is suspended, and the remainder of the non-executive director's term as a director of the trust, as the Secretary of State may specify on making the appointment: reg 9C(4) (as so added). When the period for which a person is appointed as vice-chairman expires, the Secretary of State may re-appoint the person, or appoint another non-executive director, as vice-chairman in accordance with reg 9C(3): reg 9C(5) (as so added).

39 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9C(6) (as added: see note 29). If a person resigns from the office of vice-chairman under reg 9C(6) the Secretary of State may appoint another non-executive director as vice-chairman in accordance with reg 9C(3) (see the text to notes 38): reg 9C(8)(a) (as so added).

40 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9C(7) (as added: see note 29). If the Secretary of State terminates a person's appointment as vice-chairman under reg 9C(7), the Secretary of State may appoint another non-executive director as vice-chairman in accordance with reg 9C(3) (see the text to notes 38): reg 9C(8)(b) (as so added).

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# **160. Disqualification for appointment of chairman and non-executive directors.**

A person is disqualified for appointment as the chairman or non-executive director<sup>1</sup> of an NHS trust<sup>2</sup> if:

- 107 (1) he has within the preceding five years been convicted in the United Kingdom<sup>3</sup>, the Channel Islands or the Isle of Man of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine<sup>4</sup>; or
- 108 (2) he is the subject of a bankruptcy restrictions order or an interim order<sup>5</sup>; or
- 109 (3) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body<sup>6</sup>; or
- 110 (4) he is a person whose tenure of office as the chairman, member, director or governor of a health service body has been terminated because his appointment is not in the interests of the health service<sup>7</sup>, for non-attendance at meetings or for non-disclosure of a pecuniary interest<sup>8</sup>;
- 111 (5) he is a chairman, member, director or employee of a health service body other than an NHS foundation trust<sup>9</sup>; or
- 112 (6) he is a chairman, director or employee of an NHS foundation trust<sup>10</sup>; or
- 113 (7) he: (a) performs or provides primary medical services or primary dental services<sup>11</sup>; or (b) is a partner in a partnership that, or a legal and beneficial owner of shares in a company that, or a director of a body corporate that, provides primary medical services or primary dental services<sup>12</sup>; or (c) is an employee of any of those<sup>13</sup>; or
- 114 (8) he has had his name removed<sup>14</sup> from any practitioners list<sup>15</sup> and has not subsequently had his name included in such a list or a new list<sup>16</sup>; or
- 115 (9) he is the chairman or another member of the Independent Regulator of NHS Foundation Trusts<sup>17</sup>.

In the case of a care trust<sup>18</sup>, in addition to the circumstances set out in heads (1) to (9) above, a person is disqualified for appointment as the chairman or non-executive director if he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a local authority<sup>19</sup>. Where a person is disqualified under this provision or under head (3) above he may, after the expiry of a period of not less than two years, apply in writing<sup>20</sup> to the Secretary of State to remove the disqualification and the Secretary of State may direct that the disqualification is to cease<sup>21</sup>.

Where a person is disqualified under head (4) above, the disqualification ceases on the expiry of a period of two years or such longer period as the Secretary of State specifies when terminating his period of office, but the Secretary of State may on application being made to him by that person reduce the period of disqualification<sup>22</sup>.

1 As to the meaning of 'non-executive director' see PARA 155 note 10. As to the appointment of the chairman see PARA 155. As to the appointment of directors see PARA 157.

2 As to the meaning of 'NHS trust' see PARA 157 note 2. As to NHS trusts generally see PARA 155.

3 As to the meaning of 'United Kingdom' see PARA 15 note 8.

4 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(a). For these purposes the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires, or if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of it not being prosecuted: reg 11(2).

5 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(b) (substituted by SI 2006/1722). As to bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

6 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(c). For these purposes a person is not treated as having been in paid employment by reason only of his chairmanship, membership or directorship or, in the case of an NHS foundation trust his chairmanship, governorship or non-executive directorship of, the health service body in question: reg 11(3) (amended by SI 2004/696). 'Health service body' means: a strategic health authority, a special health authority, a primary care trust, an NHS trust, an NHS foundation trust, a contractor which is treated as a health service body pursuant to the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10 (see PARA 437), the Independent Regulator of NHS Foundation Trusts, or the Health Protection Agency: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 1(2) (definition amended by SI 1996/1755; SI 1998/646; SI 2000/2434; SI 2002/2469; SI 2004/696; SI 2005/525; SI 2006/552). As to strategic health authorities see PARA 94 et seq. As to the special health authorities see PARA 136. As to primary care trusts see PARA 111. As to NHS foundation trusts see PARA 174. As to the Independent Regulator of NHS Foundation Trusts see PARA 188 et seq. As to the Health Protection Agency see PARA 213. As to redundancy see **EMPLOYMENT** vol 40 (2009) PARA 790 et seq.

7 As to the meaning of 'health service' see PARA 10 note 3.

8 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(d) (reg 11(1)(d), (e) amended, 11(1)(ee) added, by SI 2004/696). As to disclosure of a pecuniary interest see PARA 163.

9 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(e) (as amended: see note 8). A person is not disqualified by reg 11(1)(e) or reg 11(1)(ee) (see the text to note 10) from being the non-executive director of an NHS trust referred to in the National Health Service Act 2006 Sch 4 para 5(1)(d) (see PARA 156) by reason of his employment with a health service body: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(4) (amended by SI 1990/2160; SI 2004/696). A person is not disqualified by the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(e) from being the non-executive director of an NHS trust by reason of being a chairman or non-officer member of the National Institute for Health and Clinical Excellence (see PARA 149), the National Health Service Litigation Authority (see PARA 148), the NHS Institute for Innovation and Improvement (see PARA 153), or the NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (see PARA 147): reg 11(5) (amended by SI 2001/2629; SI 2005/497; SI 2005/502; SI 2005/1446; SI 2005/2529; SI 2005/2532; SI 2006/635). A person is not disqualified by the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(e) from being the chairman or a non-executive director of an NHS trust during the period between the date on which it is established and its operational date by virtue of being the chairman or a non-executive director of another NHS trust: reg 11(6) (added by SI 1998/1975). As to the meaning of 'operational date' see PARA 156 note 10. A person is not disqualified by the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(e) from being the chairman or a non-executive director of an NHS trust by reason of being:

- 19 (1) a chairman or non-executive member of the National Patient Safety Agency (see PARA 150) or the National Treatment Agency (see PARA 151) (reg 11(5A) (added by SI 2001/4031));
- 20 (2) a chairman or member of the NHSU or the NHS Professionals Special Health Authority (see PARA 154) (National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(5B) (added by SI 2004/19));
- 21 (3) the chairman or a non-officer member of a primary care trust during the primary care trust's preparatory period (see PARA 111 note 11); and in this context 'non-officer member' has the same meaning as in the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 1(2) (see PARA 113 note 5) (National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(7) (added by SI 2000/2434)).

The NHSU (see head (2) above) has been abolished and replaced by the NHS Institute for Innovation and Improvement: see the NHSU Abolition Order 2005, SI 2005/1781; and PARA 153.

10 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(ee) (as added: see note 8). See also note 9.

11 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(f)(ii) (reg 11(1)(f) substituted by SI 2004/865; and SI 2004/1016; National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(f)(ii), (iii) amended by SI 2006/562; SI 2006/946). As to primary medical services see PARA 241. As to primary dental services see PARA 277.

12 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(f)(iii) (as substituted and amended: see note 11).

13 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(f)(iv) (as substituted: see note 11).

14 le by a direction under the National Health Service Act 1977 s 46 (repealed).

15 le prepared under the National Health Service Act 1977 Pt II (repealed).

16 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(h) (amended by SI 2004/865; SI 2004/1016). A new list is one prepared pursuant to the National Health Service Act 2006 s 91 (see PARA 248), s 106 (see PARA 283) or s 146 (see PARA 417): National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(h) (as so amended); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

17 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1)(i) (added by SI 2004/696).

18 As to the meaning of 'care trust' see PARA 157 note 2.

19 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 11(1A) (added by SI 2001/3786). As to the meaning of 'local authority' see PARA 17 note 3.

20 As to the meaning of 'writing' see PARA 7 note 2.

21 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 12(3) (amended by SI 2001/3786). Where the Secretary of State refuses an application to remove a disqualification no further application may be made by that person until the expiration of two years from the date of the application: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 12(4).

22 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 12(5) (amended by SI 1996/1755).

## **UPDATE**

### **160 Disqualification for appointment of chairman and non-executive directors**

TEXT AND NOTES 11, 12--SI 1990/2024 reg 11(1)(f)(ii), (iii) substituted in relation to England: SI 2008/1700.

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## **161. Vice chairman.**

For the purpose of enabling the proceedings of the trust to be conducted in the absence of the chairman, the directors<sup>1</sup> of an NHS trust<sup>2</sup> may appoint a non-executive director<sup>3</sup> from amongst them to be vice-chairman for such a period, not exceeding the remainder of his term as non-executive director of the trust<sup>4</sup>, as they may specify on appointing him<sup>5</sup>. Any non-executive director so elected may at any time resign from the office of vice-chairman by giving notice in writing<sup>6</sup> to the chairman, and the directors of the trust may<sup>7</sup> thereupon appoint another non-executive director as vice-chairman<sup>8</sup>.

1 'Director' includes the chairman: see the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 1(2). As to the appointment of the chairman see PARA 155. As to the appointment of directors see PARA 157.

2 As to the meaning of 'NHS trust' see PARA 157 note 2. As to NHS trusts generally see PARA 155.

3 As to the meaning of 'non-executive director' see PARA 155 note 10.

4 As to tenure of office see PARA 158. As to termination of office see PARA 159.

5 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 13(1). Regulation 13 does not apply in relation to any NHS trust to which reg 9C (see PARA 159) applies: reg 13(3) (added by SI 2008/1269). Where the chairman of an NHS trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as chairman owing to illness, absence from England and Wales, suspension under the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 9A (see PARA 159), or any other cause, references to the chairman in the rules as to meetings and proceedings of NHS trusts (see the Schedule; and PARA 163) must, so long as there is no chairman able to perform his duties, be taken to include references to the vice-chairman: reg 14 (amended by SI 2008/1269). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 As to the meaning of 'writing' see PARA 7 note 2.

7 In accordance with the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 13(1): see the text to notes 1-5.

8 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 13(2).

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## **162. Committees and sub-committees.**

An NHS trust<sup>1</sup> must appoint a committee whose members are the chairman and non-executive directors<sup>2</sup> of the trust whose function will be to appoint the chief officer as a director of the trust<sup>3</sup>. An NHS trust must also appoint a committee whose members are the chairman, the non-executive directors and the chief officer whose function will be to appoint the executive directors<sup>4</sup> of the trust other than the chief officer<sup>5</sup>.

Subject to the requirement to appoint such committees<sup>6</sup>, an NHS trust may appoint committees of the trust consisting wholly or partly of directors<sup>7</sup> of the trust or wholly of persons who are not directors of the trust<sup>8</sup>; and such a committee may appoint sub-committees<sup>9</sup>. An NHS trust may make arrangements for the exercise, on behalf of the trust, of any of its functions<sup>10</sup> by such a committee or sub-committee subject to such restrictions and conditions as the trust thinks fit<sup>11</sup>.

1 As to the meaning of 'NHS trust' see PARA 157 note 2. As to NHS trusts generally see PARA 155.

2 As to the meaning of 'non-executive director' see PARA 155 note 10. As to the appointment of the chairman see PARA 155. As to the appointment of directors see PARA 157.

3 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 17. In the case of a care trust the non-executive directors must include a person mentioned in reg 4(5) (see PARA 157 note 5): reg 17 (regs 17, 18 amended by SI 2001/3786). As to the meaning of 'care trust' see PARA 157 note 2.

4 As to the meaning of 'executive director' see PARA 155 note 10.

5 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 18. In the case of a care trust the non-executive directors must include a person mentioned in reg 4(5) (see PARA 157 note 5): reg 18 (as amended: see note 3).

6 Ie subject to the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, regs 17 and 18: see the text to notes 1-5.

7 As to the meaning of 'director' see PARA 161 note 1.

8 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 15(1).

9 A committee appointed under the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 15(1) (see the text to notes 6-8) may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include the directors of the trust) or wholly of persons who are not members of the committee (whether or not they include directors of the trust): reg 15(2).

10 Ie subject to the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, regs 17 and 18: see the text to notes 1-5. As to the meaning of 'functions' see PARA 6 note 3.

11 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 16.

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### **163. Meetings and proceedings.**

The meetings and proceedings of an NHS trust<sup>1</sup> must be conducted in accordance with the statutory rules as to meetings and proceedings of NHS trusts<sup>2</sup> and with standing orders made by the trust<sup>3</sup>. An NHS trust may make, vary and revoke standing orders relating to the quorum, proceedings and place of meetings of a committee or sub-committee<sup>4</sup> but, subject to any such standing orders<sup>5</sup>, the quorum, proceedings and place of meeting are such as the committee or sub-committee may determine<sup>6</sup>. The proceedings of an NHS trust are not invalidated by any vacancy in its membership or by any defect in a director's appointment<sup>7</sup>.

If a director of an NHS trust has any pecuniary interest, direct or indirect<sup>8</sup>, in any contract, proposed contract or other matter and is present at a meeting of the trust at which the contract or other matter is the subject of consideration, he must at the meeting and as soon as practicable after its commencement disclose the fact and must not take part in the consideration and discussion of the contract or other matter or vote on any question with respect to it<sup>9</sup>. An NHS trust may, by standing orders<sup>10</sup> provide for the exclusion of a director from a meeting of the trust while any contract, proposed contract, or other matter in which he has a pecuniary interest, direct or indirect, is under consideration<sup>11</sup>. These provisions<sup>12</sup> apply to a committee or sub-committee of an NHS trust as they apply to the trust and apply to any member of any such committee or sub-committee (whether or not he is also a director of the trust) as it applies to a director of the trust<sup>13</sup>. The Secretary of State<sup>14</sup> may, subject to such conditions as he may think fit to impose, remove any disability imposed by these provisions<sup>15</sup>, in any case in which it appears to him in the interests of the health service<sup>16</sup> that the disability should be removed<sup>17</sup>.

1 As to the meaning of 'NHS trust' see PARA 157 note 2. As to NHS trusts generally see PARA 155.

2 See the rules set out in the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 19(1), Schedule.

3 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 19(1). Subject to the statutory rules as to meetings and proceedings of NHS trusts and to reg 20 (see the text to notes 8-17) an NHS trust must make and may vary or revoke standing orders for the regulation of its proceedings and business and provision may be made in such standing orders for the suspension of them: reg 19(2).

4 As to committees and sub-committees see PARA 162.

5 Subject also to the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, regs 17 and 18 (see PARA 162) and reg 20 (see the text to notes 8-17).

6 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 19(3) (amended by SI 2001/3786).

7 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 19(4). As to the meaning of 'director' see PARA 161 note 1.

8 Any remuneration, compensation or allowances payable to a director by virtue of the National Health Service Act 2006 Sch 4 para 11 (see PARA 155) is not treated as a pecuniary interest for these purposes: National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 20(4); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). A director is treated for these purposes as having indirectly a pecuniary interest in a contract, proposed contract or other matter if: (1) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration (National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg

20(5)(a)); or (2) he is a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and, in the case of married persons living together, the interest of one spouse is deemed to be also an interest of the other (reg 20(5)(b)). A director is not treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only: (a) of his membership of a company or other body if he has no beneficial interest in any securities of that company or other body (reg 20(6)(a)); (b) of an interest in any company, body or person with which he is connected as mentioned in reg 20(5) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter (reg 20(6)(b)). Where a director: (i) has an indirect pecuniary interest in a contract or other matter by reason only of a beneficial interest in securities of a company or other body (reg 20(7)(a)); and (ii) the total nominal value of those securities does not exceed £5,000 or one hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less (reg 20(7)(b)); and (iii) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has the beneficial interest does not exceed one hundredth of the total issued share capital of that class (reg 20(7)(c)), he is not prohibited from taking part in consideration or discussion of the contract or other matter or from voting on any question in respect to it without prejudice however to his duty to disclose his interest (reg 20(7)). 'Public body' includes any body established for the purposes of carrying on, under national ownership, any industry or part of any industry or undertaking; the governing body of any university, university college or college, school or hall of a university; and the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq); National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 1(3). 'Securities' means shares or debentures, whether constituting a charge on the assets of the company or other body or not, or rights or interests in any shares or such debentures, or rights (whether actual or contingent) in respect of money lent to or deposited with any industrial and provident society or building society: reg 1(3). 'Shares' means shares in the share capital of a company or other body or the stock of a company or other body: reg 1(3). As to the meaning of 'person' see PARA 17 note 2. As to companies see **COMPANIES**. As to industrial and provident societies see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2394 et seq. As to building societies see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1856 et seq.

9 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 20(1).

10 Ie standing orders made under the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 19: see the text to notes 1-7.

11 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 20(3).

12 Ie the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 20.

13 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 20(8).

14 As to the Secretary of State see PARA 6 note 8.

15 Ie by the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 20.

16 As to the meaning of 'health service' see PARA 10 note 3.

17 National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024, reg 20(2).



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#### **164. Staff.**

An NHS trust<sup>1</sup> may employ such staff as it considers appropriate<sup>2</sup>; and may pay its staff such remuneration and allowances<sup>3</sup>, and employ them on such other terms and conditions<sup>4</sup>, as it considers appropriate<sup>5</sup>. An NHS trust may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities<sup>6</sup>. Such arrangements may include the establishment and administration, by the NHS trust or otherwise, of one or more pension schemes<sup>7</sup>.

Provision is made in relation to the transfer of staff employed by a special health authority<sup>8</sup>, primary care trust<sup>9</sup> or local health board<sup>10</sup> at, or for the purposes of, a hospital<sup>11</sup> or other establishment or facility which will become the responsibility of an NHS trust, and for the continuation of their contracts of employment with the NHS trust<sup>12</sup>.

1 As to NHS trusts see PARA 155.

2 National Health Service Act 2006 Sch 4 para 25(1).

3 National Health Service Act 2006 Sch 4 para 25(2)(a).

4 National Health Service Act 2006 Sch 4 para 25(2)(b).

5 National Health Service Act 2006 Sch 4 para 25(2). An NHS trust must in exercising its powers under Sch 4 para 25(2), and otherwise in connection with the employment of its staff, act in accordance with regulations and any directions given by the Secretary of State: Sch 4 para 25(3). Before making any such regulations, the Secretary of State must consult such bodies as he may recognise as representing persons who, in his opinion, are likely to be affected by the regulations: Sch 4 para 25(4). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service (Appointment of Consultants) Regulations 1996, SI 1996/701 (see PARA 87) have effect under the National Health Service Act 2006 Sch 4 para 25(3). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the making of regulations and as to directions see PARA 9. As to the protection from liability of officers of NHS trusts see PARA 82.

6 National Health Service Act 2006 Sch 4 para 26(1). The reference to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the NHS trust's employees who suffer loss of office or employment or loss or diminution of emoluments: Sch 4 para 26(3). Schedule 4 para 26 does not affect the generality of Sch 4 para 14 (see PARA 168) and para 25 (see the text to notes 1-5): Sch 4 para 26(4).

7 National Health Service Act 2006 Sch 4 para 26(2). As to the National Health Service pension scheme see PARA 717 et seq.

8 As to the special health authorities see PARA 136.

9 As to primary care trusts see PARA 111.

10 As to the meaning of 'local health board' see PARA 17 note 13.

11 As to the meaning of 'hospital' see PARA 12 note 4.

12 See the National Health Service Act 2006 Sch 4 para 8.

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### **165. Transfer of property and liabilities to NHS trusts.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> transfer, or provide for the transfer of, any of the property<sup>3</sup> and liabilities<sup>4</sup> of a strategic health authority<sup>5</sup>, a primary care trust<sup>6</sup>, a special health authority<sup>7</sup>, a local health board<sup>8</sup>, or the Secretary of State, to an NHS trust<sup>9</sup>, with effect from any date as may be specified in the order<sup>10</sup>. Such an order may create or impose such new rights or liabilities in respect of what is transferred or what is retained as appear to the Secretary of State to be necessary or expedient<sup>11</sup>. Where an order provides for the transfer of land<sup>12</sup> held on lease from a third party<sup>13</sup>, or of any other asset leased or hired from a third party or in which a third party has an interest<sup>14</sup>, the transfer is binding on the third party notwithstanding that, apart from this provision, it would have required his consent or concurrence<sup>15</sup>.

Any property and liabilities which belong to, or are used or managed by, a strategic health authority, special health authority or local health board or belong to a primary care trust<sup>16</sup>, and will be transferred to an NHS trust by or by virtue of an order<sup>17</sup>, must be identified by agreement between the strategic health authority, primary care trust, special health authority or local health board and the NHS trust or, in default of agreement, by direction of the Secretary of State<sup>18</sup>. Where, for the purpose of a transfer pursuant to an order, it becomes necessary to apportion any property or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose<sup>19</sup>. An order may include provision for matters to be settled by arbitration by a person determined in accordance with the order<sup>20</sup>. In the case of any transfer made by or pursuant to an order, a certificate issued by the Secretary of State that any property specified in the certificate or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is vested in the NHS trust specified in the order is conclusive evidence of that fact for all purposes<sup>21</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 The power to make such orders is not exercisable by statutory instrument (see the National Health Service Act 2006 s 272(2), (3)(e); and PARA 9) and such orders are not recorded in this work.

3 As to the meaning of 'property' see PARA 4 note 9.

4 In the absence of a specific reference in the legislation, criminal liabilities are not transferred: see *R v Pennine Acute Hospitals NHS Trust (formerly Rochdale Healthcare NHS Trust)* [2003] EWCA Crim 3436, [2004] 1 All ER 1324.

5 As to strategic health authorities see PARA 94 et seq.

6 As to primary care trusts see PARA 111.

7 As to the special health authorities see PARA 136.

8 As to the meaning of 'local health board' see PARA 17 note 13.

9 As to NHS trusts see PARA 155.

10 National Health Service Act 2006 Sch 4 para 9(1). Nothing in Sch 4 para 9 affects the power of the Secretary of State or any power of a strategic health authority, primary care trust, special health authority or local health board to transfer property or liabilities to an NHS trust otherwise than under Sch 4 para 9(1): Sch 4 para 9(3). Stamp duty is not chargeable in respect of any transfer to an NHS trust effected by or by virtue of an

order under Sch 4 para 9: Sch 4 para 9(4). As to stamp duty see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1001 et seq.

11 National Health Service Act 2006 Sch 4 para 9(2).

12 As to the meaning of 'land' see PARA 24 note 2.

13 National Health Service Act 2006 Sch 4 para 9(5)(a). 'Third party' means a person other than the Secretary of State, a strategic health authority, a primary care trust, a special health authority or a local health board: Sch 4 para 9(6). As to the meaning of 'person' see PARA 17 note 12.

14 National Health Service Act 2006 Sch 4 para 9(5)(b).

15 National Health Service Act 2006 Sch 4 para 9(5).

16 National Health Service Act 2006 Sch 4 para 9(7)(a).

17 National Health Service Act 2006 Sch 4 para 9(7)(b).

18 National Health Service Act 2006 Sch 4 para 9(7). As to the making of directions generally see PARA 9.

19 National Health Service Act 2006 Sch 4 para 9(8). Where any such property or rights fall within Sch 4 para 9(5) (see the text to notes 12-15), the order must contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order: Sch 4 para 9(9).

20 National Health Service Act 2006 Sch 4 para 9(11). This provision does not affect s 272(8) (see PARA 9): Sch 4 para 9(12).

21 National Health Service Act 2006 Sch 4 para 9(10). As to the evidential effect of certificates admissible by statute see **CIVIL PROCEDURE** vol 11 (2009) PARA 897.

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## **166. Trust funds and trustees.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for the appointment of trustees for an NHS trust<sup>3</sup> to hold property<sup>4</sup> on trust<sup>5</sup>: (1) for the general or any specific purposes of the NHS trust (including the purposes of any specific hospital<sup>6</sup> or other establishment or facility at or from which services are provided by the NHS trust)<sup>7</sup>; or (2) for any purposes relating to the health service<sup>8</sup>. An order may: (a) make provision as to the persons<sup>9</sup> by whom trustees must be appointed and generally as to the method of their appointment<sup>10</sup>; (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State)<sup>11</sup>; (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate<sup>12</sup>; and (d) make provision with respect to the term of office of any trustee and his removal from office<sup>13</sup>. Where under these provisions trustees have been appointed for an NHS trust, the Secretary of State may by order provide for the transfer of any trust property from the NHS trust to the trustees<sup>14</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 The power to make such orders is exercisable by statutory instrument: see the National Health Service Act 2006 s 272(2); and PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service Trusts (Trust funds: Appointment of Trustees) Order 2000, SI 2000/212 (amended by SI 2000/3116) has effect under the National Health Service Act 2006 Sch 4 para 10. Orders relating to individual NHS trusts are not recorded in this work.

3 As to NHS trusts see PARA 155.

4 As to the meaning of 'property' see PARA 4 note 9.

5 As to supplementary provision in relation to such trusts see the National Health Service Act 2006 s 217; and PARA 71.

6 As to the meaning of 'hospital' see PARA 12 note 4.

7 National Health Service Act 2006 Sch 4 para 10(1)(a).

8 National Health Service Act 2006 Sch 4 para 10(1)(b). As to the meaning of 'health service' see PARA 10 note 3.

9 As to the meaning of 'person' see PARA 17 note 2.

10 National Health Service Act 2006 Sch 4 para 10(2)(a).

11 National Health Service Act 2006 Sch 4 para 10(2)(b).

12 National Health Service Act 2006 Sch 4 para 10(2)(c).

13 National Health Service Act 2006 Sch 4 para 10(2)(d).

14 National Health Service Act 2006 Sch 4 para 10(3). As to transfers of trust property see ss 213, 216; and PARAS 67, 70.

## **UPDATE**

**166 Trust funds and trustees**

NOTE 2--SI 2000/212 further amended: SI 2008/1902.

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## **167. Dissolution.**

An NHS trust<sup>1</sup> may not be dissolved or wound up except on the merger of the trust with an NHS foundation trust<sup>2</sup> or in accordance with an order<sup>3</sup> made by the Secretary of State<sup>4</sup>. Such an order may be made on the application of the NHS trust concerned<sup>5</sup>, or if the Secretary of State considers it appropriate in the interests of the health service<sup>6</sup>. Except where it appears to the Secretary of State necessary to make an order as a matter of urgency, no such order may be made until after the completion of such consultation as may be prescribed<sup>7</sup>.

If an NHS trust is dissolved under such an order, the Secretary of State may by order<sup>8</sup> transfer, or provide for the transfer, to himself or an NHS body<sup>9</sup> of such of the property<sup>10</sup> and liabilities<sup>11</sup> of the NHS trust which is dissolved as in his opinion is appropriate<sup>12</sup>. The order may also make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved<sup>13</sup>. No order may be made until after completion of such consultation as may be prescribed<sup>14</sup>.

If an NHS trust is dissolved by order<sup>15</sup>, the Secretary of State or such other NHS trust, strategic health authority, primary care trust<sup>16</sup>, special health authority or local health board as he may direct<sup>17</sup> must undertake the responsibility for the continued payment of any such pension, allowances or gratuities as would otherwise<sup>18</sup> have been the responsibility of the NHS trust which has been dissolved<sup>19</sup>.

1 As to NHS trusts see PARA 155.

2 Ie under the National Health Service Act 2006 s 57: see PARA 212. As to NHS foundation trusts see PARA 174.

3 Ie an order made under the National Health Service Act 2006 Sch 4 para 28. The power to make such orders is exercisable by statutory instrument: see s 272(2); and PARA 9. Orders relating to individual NHS trusts are not recorded in this work.

4 See the National Health Service Act 2006 Sch 4 paras 28(1), 31. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. The power of the Secretary of State to dissolve an NHS trust includes power to dissolve such a trust where he considers that it is appropriate to do so in connection with the designation of any other such body (whether existing or otherwise) as a care trust: see s 77(7); and PARA 235.

5 National Health Service Act 2006 Sch 4 para 28(2)(a).

6 National Health Service Act 2006 Sch 4 para 28(2)(b). As to the meaning of 'health service' see PARA 10 note 3.

7 National Health Service Act 2006 Sch 4 para 28(3). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996, SI 1996/653, have effect under the National Health Service Act 2006 Sch 4 para 28(3).

8 The power to make such orders is not exercisable by statutory instrument: see the National Health Service Act 2006 s 272(2), (3)(e); and PARA 9. Such orders are not recorded in this work.

9 As to the meaning of 'NHS body' see PARA 8 note 2.

10 As to the meaning of 'property' see PARA 4 note 9.

11 The liabilities which may be transferred to an NHS body include criminal liabilities: National Health Service Act 2006 Sch 4 para 29(2).

12 National Health Service Act 2006 Sch 4 para 29(1). Any such order may include provisions corresponding to those of Sch 4 para 9 (see PARA 165): Sch 4 para 29(1).

13 National Health Service Act 2006 Sch 4 para 29(3). Such an order may include provisions corresponding to those of Sch 4 para 8 (see PARA 164), including provision for the making of a scheme by such strategic health authority, special health authority, local health board or other body as may be specified in the order: Sch 4 para 29(3). As to strategic health authorities see PARA 94 et seq. As to the special health authorities see PARA 136. As to the meaning of 'local health board' see PARA 17 note 13.

14 National Health Service Act 2006 Sch 4 para 29(4). As to the prescribed provisions see the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996, SI 1996/653; and note 7.

15 Ie under the National Health Service Act 2006 Sch 4 para 28: see the text to notes 1-7.

16 As to primary care trusts see PARA 111.

17 As to the making of directions see PARA 9.

18 Ie by virtue of the National Health Service Act 2006 Sch 4 para 11(2) (see PARA 155) or para 26 (see PARA 164).

19 National Health Service Act 2006 Sch 4 para 30(1). This provision does not affect the generality of Sch 4 para 29 (see the text to notes 8-14): Sch 4 para 30(2).

## **UPDATE**

### **167 Dissolution**

TEXT AND NOTE 7--National Health Service Act 2006 Sch 4 para 28(3) amended: Health Act 2009 s 18(10).

TEXT AND NOTES 8-14--In relation to Wales, see the National Health Service Trusts (Transfer of Staff, Property, Rights and Liabilities) (Wales) Order 2009, SI 2009/1558; and the Local Health Boards (Transfer of Staff, Property, Rights and Liabilities) (Wales) Order 2009, SI 2009/1559.

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## **B. FUNCTIONS**

### **168. Exercise of functions.**

The first NHS trust order<sup>1</sup> made in relation to any NHS trust<sup>2</sup> must specify the functions<sup>3</sup> of the NHS trust<sup>4</sup>. The functions which may be specified in an NHS trust order include a duty to provide goods or services so specified at or from a hospital<sup>5</sup> or other establishment or facility so specified<sup>6</sup>. An NHS trust must exercise its functions effectively, efficiently and economically<sup>7</sup>. The Secretary of State may give directions to an NHS trust about its exercise of any functions<sup>8</sup>.

An NHS trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions<sup>9</sup>. In particular it may acquire and dispose of property<sup>10</sup>, enter into contracts<sup>11</sup>, and accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the NHS trust<sup>12</sup> or for any purposes relating to the health service)<sup>13</sup>. An NHS trust may enter into arrangements for the carrying out, on such terms as the NHS trust considers appropriate, of any of its functions jointly with any strategic health authority<sup>14</sup>, primary care trust<sup>15</sup>, special health authority<sup>16</sup>, local health board<sup>17</sup> or other NHS trust, or any other body or individual<sup>18</sup>.

1 As to the meaning of 'NHS trust order' see PARA 155 note 2.

2 As to NHS trusts see PARA 155.

3 As to the meaning of 'functions' see PARA 6 note 3.

4 See the National Health Service Act 2006 Sch 4 para 5(1)(b); and PARA 156. The functions of an NHS trust include power to provide any services to which a pilot scheme for the provision of local pharmaceutical services applies (see s 134(6); and PARA 419) and any services to which an LPS scheme applies (see s 144, Sch 12 para 1(6); and PARA 431).

5 As to the meaning of 'hospital' see PARA 12 note 4.

6 See the National Health Service Act 2006 Sch 4 para 5(2); and PARA 156.

7 National Health Service Act 2006 s 26. An NHS trust all or most of whose hospitals, establishments and facilities are situated in England, must make arrangements for ensuring that its functions are discharged having regard to the need to safeguard and promote the welfare of children, and any services provided by another person pursuant to arrangements made by it in the discharge of its functions are provided having regard to that need: Children Act 2004 s 11(1)(f), (2). In discharging this duty an NHS trust must have regard to any guidance given to it for the purpose by the Secretary of State: s 11(4). See further **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 187. As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'England' see PARA 6 note 2. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

8 See the National Health Service Act 2006 s 8; and PARA 16. An NHS trust is subject to investigation by the Health Commissioner for England: see PARA 643.

9 National Health Service Act 2006 Sch 4 para 14(1).

10 National Health Service Act 2006 Sch 4 para 14(2)(a). As to the meaning of 'property' see PARA 4 note 9. As to the power of an NHS trust to compulsorily acquire land see PARA 171. The Town and Country Planning Act 1971 s 128 (repealed) (use and development of consecrated land and burial grounds) applies to consecrated land and land comprised in a burial ground, within the meaning of that section, which an NHS trust holds for any of its purposes as if that land had been acquired by the NHS trust as mentioned in s 128(1), and the NHS trust were a statutory undertaker, within the meaning of that Act: National Health Service Act 2006 Sch 4 para 32.



The Town and Country Planning Act 1971 s 128 (repealed) is replaced by the Town and Country Planning Act 1990 ss 238-240: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 956; **CREMATION AND BURIAL** vol 10 (Reissue) PARA 1170.

11 National Health Service Act 2006 Sch 4 para 14(2)(b). As to the power of NHS trusts to enter into NHS contracts see PARA 169.

12 The reference to specific purposes of the NHS trust includes a reference to the purposes of a specific hospital or other establishment or facility at or from which services are provided by the NHS trust: National Health Service Act 2006 Sch 4 para 14(3).

13 National Health Service Act 2006 Sch 4 para 14(2)(c). As to the meaning of 'health service' see PARA 10 note 3.

14 As to strategic health authorities see PARA 94 et seq.

15 As to primary care trusts see PARA 111.

16 As to the special health authorities see PARA 136.

17 As to the meaning of 'local health board' see PARA 17 note 13.

18 National Health Service Act 2006 Sch 4 para 18. The Secretary of State may by order confer specific powers on NHS trusts, further to those provided for by Sch 4 para 18: see Sch 4 para 22. The power to make such orders is exercisable by statutory instrument: see s 272(2); and PARA 9. At the date at which this volume states the law no such orders had been made.

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## **169. Powers.**

In addition to carrying out its other functions<sup>1</sup>, an NHS trust may, as the provider<sup>2</sup>, enter into NHS contracts<sup>3</sup>. An NHS trust may not, as the provider, enter into an NHS contract for the provision of high security psychiatric services<sup>4</sup> unless the NHS trust is approved for these purposes by the Secretary of State<sup>5</sup>. An NHS trust may undertake and commission research, and make available staff and provide<sup>6</sup> facilities<sup>7</sup> for research by other persons<sup>8</sup>. An NHS trust may provide training for persons employed or likely to be employed by the NHS trust or otherwise in the provision of services under the National Health Service Act 2006<sup>9</sup>, and make facilities and staff available in connection with training by a university<sup>10</sup> or any other body providing training in connection with the health service<sup>11</sup>.

According to the nature of its functions, an NHS trust may make accommodation or services available for patients<sup>12</sup> who give undertakings (or for whom undertakings are given) to pay any charges<sup>13</sup> imposed by the NHS trust in respect of the accommodation or services<sup>14</sup>. For the purpose of making additional income available in order better to perform its functions, an NHS trust has the powers specified in the statutory provisions<sup>15</sup> relating to additional powers for financing the health service<sup>16</sup>. An NHS trust may arrange for the provision of accommodation and services outside England and Wales<sup>17</sup>.

The Secretary of State may by order<sup>18</sup> confer specific powers on NHS trusts, further to those provided for above<sup>19</sup>.

An NHS trust may provide services under an agreement for the provision of primary medical services<sup>20</sup> or an agreement for the provision of primary dental services<sup>21</sup> and may do so as a member of a qualifying body<sup>22</sup>.

1 As to the meaning of 'functions' see PARA 6 note 3. As to the exercise of functions by NHS trusts see PARA 168. As to NHS trusts see PARA 155.

2 As to the meaning of 'provider' see PARA 228.

3 National Health Service Act 2006 Sch 4 para 15(1). As to the meaning of 'NHS contract' see PARA 228.

4 As to the meaning of 'high security psychiatric services' see PARA 12.

5 National Health Service Act 2006 Sch 4 para 15(2). Such approval must be for a period specified in the approval, may be given subject to conditions, and may be amended or revoked at any time: Sch 4 para 15(3). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

6 'Provide' includes manage: National Health Service Act 2006 Sch 4 para 34.

7 As to the meaning of 'facilities' see PARA 12 note 7.

8 National Health Service Act 2006 Sch 4 para 16. As to the meaning of 'person' see PARA 17 note 2.

9 National Health Service Act 2006 Sch 4 para 17(a).

10 As to the meaning of 'university' see PARA 22 note 4.

11 National Health Service Act 2006 Sch 4 para 17(b). As to the meaning of 'health service' see PARA 10 note 3.

12 As to the meaning of 'patient' see PARA 15 note 6.

13 As to the recovery of charges see PARA 482.

14 National Health Service Act 2006 Sch 4 para 19(1). An NHS trust may exercise this power only to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts (Sch 4 para 19(2)(a)), and in circumstances specified in directions under s 8 (see PARA 16), with the Secretary of State's consent (Sch 4 para 19(2)(b)).

15 Ie in the Health and Medicines Act 1988 s 7(2): see PARA 503.

16 National Health Service Act 2006 Sch 4 para 20(1). This power may be exercised only to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts (Sch 4 para 20(2)(a)), and in circumstances specified in directions under s 8 (see PARA 16), with the consent of the Secretary of State (Sch 4 para 20(2)(b)).

17 National Health Service Act 2006 Sch 4 para 21. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

18 The power to make such orders is exercisable by statutory instrument: see the National Health Service Act 2006 s 272(2); and PARA 9. At the date at which this volume states the law no such orders had been made.

19 National Health Service Act 2006 Sch 4 para 22.

20 Ie an agreement made under the National Health Service Act 2006 s 92: see PARA 267.

21 Ie an agreement made under the National Health Service Act 2006 s 107: see PARA 288.

22 National Health Service Act 2006 Sch 4 para 24. A qualifying body is such a body within the meaning given by s 93 (see PARA 267) or s 108 (see PARA 288).

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### **170. Externally financed development agreements.**

The powers of an NHS trust<sup>1</sup> include power to enter into externally financed development agreements<sup>2</sup>. An agreement is an externally financed development agreement if it is certified as such in writing<sup>3</sup> by the Secretary of State<sup>4</sup>. The Secretary of State may give such a certificate if: (1) in his opinion the purpose or main purpose of the agreement is the provision of facilities<sup>5</sup> or services in connection with the discharge by the NHS trust of any of its functions<sup>6</sup>; and (2) a person<sup>7</sup> proposes to make a loan to, or provide any other form of finance for, another party<sup>8</sup> in connection with the agreement<sup>9</sup>. If an NHS trust enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within head (2) above in relation to the externally financed development agreement<sup>10</sup>.

The fact that an agreement made by an NHS trust has not been certified under these provisions does not affect its validity<sup>11</sup>.

1 As to NHS trusts see PARA 155. As to the powers of NHS trusts generally see PARA 169; and as to the exercise of their functions see PARA 168.

2 National Health Service Act 2006 Sch 4 para 23(1).

3 As to the meaning of 'writing' see PARA 7 note 2.

4 National Health Service Act 2006 Sch 4 para 23(2). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

5 As to the meaning of 'facilities' see PARA 12 note 7.

6 National Health Service Act 2006 Sch 4 para 23(3)(a). As to the meaning of 'functions' see PARA 6 note 3.

7 As to the meaning of 'person' see PARA 17 note 2.

8 'Another party' means any party to the agreement other than the NHS trust: National Health Service Act 2006 Sch 4 para 23(5).

9 National Health Service Act 2006 Sch 4 para 23(3)(b).

10 National Health Service Act 2006 Sch 4 para 23(4).

11 National Health Service Act 2006 Sch 4 para 23(6).

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## **171. Compulsory acquisition of land.**

An NHS trust<sup>1</sup> may be authorised to purchase land<sup>2</sup> compulsorily for the purposes of its functions<sup>3</sup> by means of an order<sup>4</sup> made by the NHS trust and confirmed by the Secretary of State<sup>5</sup>. The Acquisition of Land Act 1981<sup>6</sup> applies to the compulsory purchase of land under these provisions<sup>7</sup>; but no order may be made by an NHS trust under that Act<sup>8</sup> with respect to any land unless the proposal to acquire the land compulsorily has been submitted to the Secretary of State in such form and together with such information as he may require<sup>9</sup>, and has been approved by him<sup>10</sup>.

1 As to NHS trusts see PARA 155.

2 As to the meaning of 'land' see PARA 24 note 2.

3 As to the meaning of 'functions' see PARA 6 note 3. As to the exercise by NHS trusts of their functions see PARA 168.

4 The power to make such an order is not exercisable by statutory instrument: see the National Health Service Act 2006 s 272(2), (3)(e); and PARA 9. Such orders are not recorded in this work.

5 National Health Service Act 2006 Sch 4 para 27(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

6 As to the Acquisition of Land Act 1981 see **COMPULSORY ACQUISITION OF LAND**.

7 National Health Service Act 2006 Sch 4 para 27(2). This provision is expressed to be subject to Sch 4 para 27(3): see the text to notes 8-10.

8 Ie under the Acquisition of Land Act 1981 Pt 2 (ss 10-15): see **COMPULSORY ACQUISITION OF LAND**.

9 National Health Service Act 2006 Sch 4 para 27(3)(a).

10 National Health Service Act 2006 Sch 4 para 27(3)(b).

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## **172. Reports and information.**

For each accounting year<sup>1</sup> an NHS trust<sup>2</sup> must prepare and send to the Secretary of State<sup>3</sup> an annual report in such form as may be determined by the Secretary of State<sup>4</sup>. At such time or times as may be prescribed<sup>5</sup>, an NHS trust must hold a public meeting at which must be presented its audited accounts and annual report<sup>6</sup>, and any auditor's report<sup>7</sup> on the accounts<sup>8</sup>. In such circumstances and at such time or times as may be prescribed, an NHS trust must hold a public meeting at which such documents as may be prescribed must be presented<sup>9</sup>.

An NHS trust must furnish to the Secretary of State such reports, returns and other information, including information as to its forward planning, as, and in such form as, he may require<sup>10</sup>.

1 As to the keeping and audit of accounts of NHS trusts see PARA 518.

2 As to NHS trusts see PARA 155.

3 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

4 National Health Service Act 2006 Sch 4 para 12(1).

5 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1). For these purposes, the prescribed time for holding the public meeting of an NHS trust is on or before 30 September in every year, other than that which includes the operational date of the trust: National Health Service Trusts (Public Meetings) Regulations 1991, SI 1991/482, reg 2. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), (4), the National Health Service Trusts (Public Meetings) Regulations 1991, SI 1991/482, have effect under the National Health Service Act 2006 Sch 4 para 12(2), (3). As to the meaning of 'operational date' see PARA 156 note 10.

6 National Health Service Act 2006 Sch 4 para 12(2)(a).

7 In any report made pursuant to the Audit Commission Act 1998 s 8 or the Government of Wales Act 2006 Sch 8 para 19: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 763.

8 National Health Service Act 2006 Sch 4 para 12(2)(b).

9 National Health Service Act 2006 Sch 4 para 12(3). For these purposes:

22 (1) the circumstances in which an NHS trust all or most of whose hospitals, establishments and facilities are situated in England must hold a public meeting are those where it has received an auditor's report made under the provisions of the Audit Commission Act 1998 s 8, other than a report on the audited accounts (National Health Service Trusts (Public Meetings) Regulations 1991, SI 1991/482, reg 3(a) (amended by the Audit Commission Act 1998 s 54(2), Sch 4 para 4(1); SI 2005/761));

23 (2) the circumstances in which an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales must hold a public meeting are those where it has received a report made under the provisions of the Government of Wales Act 1998 s 96A (National Health Service Trusts (Public Meetings) Regulations 1991, SI 1991/482, reg 3(aa) (added by SI 2005/761));

24 (3) the time for holding the meeting is as soon as practicable, and in any event not later than three months, after the date on which the NHS trust received that report (National Health Service Trusts (Public Meetings) Regulations 1991, SI 1991/482, reg 3(b)); and

25 (4) the document which must be presented at the meeting is that report (reg 3(c)).

As to the meaning of 'hospital' see PARA 12 note 4. As to the meaning of 'facilities' see PARA 12 note 7. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the meaning of 'month' see PARA 28 note 16.

10 National Health Service Act 2006 Sch 4 para 13.

## **UPDATE**

### **172 Reports and information**

NOTE 8--In the case of NHS Direct National Health Service Trust, see the National Health Service Act 2006 Sch 4 para 12(2A) (added by SI 2008/817).

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### **C. SPECIFIC TRUSTS**

#### **173. NHS Direct.**

An NHS trust<sup>1</sup> called the NHS Direct National Health Service Trust is established by order<sup>2</sup>. The trust has eight non-executive directors (including the chairman), and five executive directors<sup>3</sup>. The trust's functions<sup>4</sup> are to provide goods and services for the purposes of the health service<sup>5</sup> and, in particular, to provide: (1) health related information to the public, NHS bodies<sup>6</sup>, health service professionals<sup>7</sup>, health service providers<sup>8</sup> and statutory health bodies<sup>9</sup>; (2) clinical advice to the public in relation to persons with symptomatic conditions<sup>10</sup>; and (3) such other services as can reasonably be carried out in conjunction with the provision of the services specified in heads (1) and (2) above<sup>11</sup>.

1 As to NHS trusts see PARA 155.

2 NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 2. The trust is established for the purposes specified in the National Health Service Act 2006 s 25(1) (see PARA 155): NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 3(1). The operational date of the trust is 1 April 2007 (art 5(1)); and the accounting date of the trust is 31 March (art 5(2)). As to the meaning of 'operational date' see PARA 156 note 10.

3 NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 4. As to the meanings of 'executive director' and 'non-executive director' see PARA 155 note 10. As to the appointment of the chairman see PARA 155; and as to the appointment of directors see PARA 157.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 As to the meaning of 'health service' see PARA 10 note 3.

6 'NHS bodies' means strategic health authorities, special health authorities, primary care trusts, NHS trusts and NHS foundation trusts: NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 1(2). As to strategic health authorities see PARA 94 et seq. As to the special health authorities see PARA 136. As to primary care trusts see PARA 111. As to NHS foundation trusts see PARA 174.

7 'Health service professional' means any person who is regulated by any of the regulatory bodies mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (bodies within the remit of the Council for the Regulation of Health Care Professionals: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294): NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 1(2).

8 'Health service provider' means any person (other than an NHS body or health service professional), providing pharmaceutical services, primary dental services, primary medical services, or primary or general ophthalmic services: NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 1(2). 'Pharmaceutical services' means services provided under the National Health Service Act 2006 s 126 (see PARA 339), in accordance with a direction under s 127 (see PARA 346), or local pharmaceutical services or piloted services within the meaning of s 134(7) (see PARA 419): NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 1(2). 'Primary dental services' means services which are primary dental services for the purposes of the National Health Service Act 2006 Pt 5 (ss 99-114) (see PARA 277); 'primary medical services' means services which are primary medical services for the purposes of Pt 4 (ss 83-98) (see PARA 241); 'primary ophthalmic services' means services which are primary ophthalmic services for the purposes of Pt 6 (ss 115-125) (see PARA 328); and 'general ophthalmic services' means services which are general ophthalmic services for the purposes of the National Health Service Act 1977 Pt II (ss 35-56) (see PARA 295): NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 1(2). As to the meaning of 'person' see PARA 17 note 2.

9 NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 3(2)(a). 'Statutory health bodies' means any body (other than an NHS body or health service provider), established by or under an



enactment and providing services in connection with the provision of, or exercising functions in relation to, the health service in England: art 1(2). As to the meaning of 'England' see PARA 6 note 2.

10 NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 3(2)(b).

11 NHS Direct National Health Service Trust (Establishment) Order 2007, SI 2007/478, art 3(2)(c).

## **UPDATE**

### **173 NHS Direct**

TEXT AND NOTES 9-11--SI 2007/478 art 3(2) amended: SI 2008/2769.

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## **(vi) NHS Foundation Trusts**

### **A. ESTABLISHMENT**

#### **(A) STATUS AND CONSTITUTION**

##### **174. Status and constitution.**

An NHS foundation trust is a public benefit corporation<sup>1</sup> which is authorised<sup>2</sup> to provide goods and services<sup>3</sup> for the purposes of the health service<sup>4</sup> in England<sup>5</sup>. A public benefit corporation must have a constitution<sup>6</sup>. The constitution must name the corporation and, if the corporation is an NHS foundation trust, its name must include the words 'NHS foundation trust'<sup>7</sup>. The constitution must make provision for the authentication of the fixing of the corporation's seal<sup>8</sup>. As well as any provision authorised or required to be made by statute<sup>9</sup>, the constitution may make further provision (other than provision as to the powers of the corporation) consistent with the statutory provisions<sup>10</sup>. An NHS foundation trust may make amendments of its constitution with the approval of the regulator<sup>11</sup>.

Provision is made as to the membership of a public benefit corporation<sup>12</sup>. A public benefit corporation has a board of governors<sup>13</sup> and a board of directors<sup>14</sup>.

1 A 'public benefit corporation' is a body corporate which, in pursuance of an application under the National Health Service Act 2006 Pt 2 Ch 5 (ss 30-65), is constituted in accordance with Sch 7: s 30(2). As to applications to become public benefit corporations see PARAS 193, 194. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**.

2 Ie under the National Health Service Act 2006 Pt 2 Ch 5 (ss 30-65). As to authorisation generally see PARA 193 et seq.

3 Any references in the National Health Service Act 2006 Pt 2 Ch 5 (ss 30-65) to 'goods and services' include, in particular, facilities, education and training: s 65(2). As to the meaning of 'goods' see PARA 12 note 7. As to the meaning of 'facilities' see PARA 12 note 7.

4 As to the meaning of 'health service' see PARA 10 note 3.

5 National Health Service Act 2006 s 30(1). NHS foundation trusts do not exist in Wales; as to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to authorisation in relation to the provision of such goods and services see PARA 205. As to financial matters in relation to NHS foundation trusts see PARA 199 et seq. An NHS foundation trust is a public authority for the purposes of the Freedom of Information Act 2000: see s 3, Sch 1 Pt III (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 paras 113, 114); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

6 National Health Service Act 2006 Sch 7 para 1(1).

7 National Health Service Act 2006 Sch 7 para 2.

8 National Health Service Act 2006 Sch 7 para 29(1). A document purporting to be duly executed under the corporation's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed: Sch 7 para 29(2). As to the execution of deeds by companies see **COMPANIES** vol 14 (2009) PARA 287 et seq.

9 Ie by the National Health Service Act 2006 Sch 7.

- 10 National Health Service Act 2006 Sch 7 para 1(2). The statutory provisions are those of Sch 7.
- 11 National Health Service Act 2006 s 37. As to the meaning of 'regulator' see PARA 188 note 1.
- 12 As to membership of public benefit corporations see PARAS 175, 176.
- 13 As to the board of governors of public benefit corporations see PARA 177.
- 14 As to the board of directors of public benefit corporations see PARA 180.

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## (B) MEMBERSHIP

### **175. Eligibility for membership.**

The persons who may become or continue as members of a public benefit corporation<sup>1</sup> are:

- 116 (1) individuals who live in any area specified in the constitution<sup>2</sup> as the area for a public constituency<sup>3</sup>;
- 117 (2) individuals employed by the corporation under a contract of employment and, if the constitution so provides, individuals who exercise functions<sup>4</sup> for the purposes of the corporation otherwise than under a contract of employment with the corporation<sup>5</sup>;
- 118 (3) if the constitution so provides, individuals who have attended any of the corporation's hospitals<sup>6</sup> as either a patient<sup>7</sup> or the carer of a patient within a period specified in the constitution<sup>8</sup>.

The constitution may specify one or more areas as areas for public constituencies, each of which must be an electoral area for the purposes of local government elections in England and Wales<sup>9</sup> or an area consisting of two or more such electoral areas<sup>10</sup>. The constitution may make further provision as to the circumstances in which a person may not become or continue as a member<sup>11</sup>.

Members of a public benefit corporation are referred to as follows<sup>12</sup>: (a) those who live in an area specified in the constitution as an area for any public constituency are referred to collectively as a 'public constituency'<sup>13</sup>; (b) those who come within head (2) above are referred to collectively as the 'staff constituency'<sup>14</sup>; (c) those who come within head (3) above are referred to collectively as the 'patients' constituency'<sup>15</sup>. A person who is a member of a constituency, or of a class within a constituency, may not while that membership continues be a member of any other constituency or class<sup>16</sup>; and a person who comes within head (2) above may not become or continue as a member of any constituency other than the staff constituency<sup>17</sup>.

The constitution must require a minimum number of members of each constituency or, where there are classes within the constituency, of each class<sup>18</sup>.

1 As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174. As to becoming a member of a public benefit corporation see PARA 176. As to the register of members see PARA 182. As to the protection from liability of members and officers of NHS foundation trusts see PARA 82.

2 As to the constitution see PARA 174.

3 National Health Service Act 2006 Sch 7 para 3(1)(a).

4 As to the meaning of 'functions' see PARA 6 note 3.

5 National Health Service Act 2006 Sch 7 para 3(1)(b). A person may become or continue as a member of the corporation by virtue of Sch 7 para 3(1)(b) only if: (1) he is employed by the corporation under a contract of employment which has no fixed term or has a fixed term of at least 12 months (Sch 7 para 3(3)(a)); or (2) he has been continuously employed by the corporation for at least 12 months or, where he exercises functions for the purposes of the corporation as mentioned in Sch 7 para 3(1)(b), he has done so continuously for such a

period (Sch 7 para 3(3)(b)). The Employment Rights Act 1996 Pt 14 Ch 1 (ss 210-219) (see **EMPLOYMENT** vol 39 (2009) PARA 105 et seq) applies for the purpose of determining whether an individual has been continuously employed by the corporation, or has continuously exercised functions for the purposes of the corporation, as it applies for the purposes of that Act: National Health Service Act 2006 Sch 7 para 3(4). The constitution may divide those who come within Sch 7 para 3(1)(b) into two or more descriptions of individuals: Sch 7 para 3(5). As to the meaning of 'month' see PARA 28 note 16. As to contracts of employment see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.

6 As to the meaning of 'hospital' see PARA 12 note 4.

7 As to the meaning of 'patient' see PARA 15 note 6.

8 National Health Service Act 2006 Sch 7 para 3(1)(c). An individual providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation, does not come within Sch 7 para 3(1)(c): Sch 7 para 3(6). The constitution may divide those who come within Sch 7 para 3(1)(c) into three or more descriptions of individuals, one of which must comprise the carers of patients: Sch 7 para 3(7). As to the meaning of 'voluntary organisation' see PARA 17 note 3.

9 As to electoral areas for the purposes of local government elections in England and Wales see the Representation of the People Act 1983 s 203(1); and **ELECTIONS AND REFERENDUMS** vol 15(3) (2007 Reissue) PARA 10. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

10 National Health Service Act 2006 Sch 7 para 3(2).

11 National Health Service Act 2006 Sch 7 para 3(8).

12 National Health Service Act 2006 Sch 7 para 4(1).

13 National Health Service Act 2006 Sch 7 para 4(2).

14 National Health Service Act 2006 Sch 7 para 4(3). If the power in Sch 7 para 3(5) (see note 5) is exercised, each description of members is referred to as a class within that constituency: Sch 7 para 4(3).

15 National Health Service Act 2006 Sch 7 para 4(4). If the power in Sch 7 para 3(7) (see note 8) is exercised, each description of members is referred to as a class within that constituency: Sch 7 para 4(4).

16 National Health Service Act 2006 Sch 7 para 4(5).

17 National Health Service Act 2006 Sch 7 para 4(6).

18 National Health Service Act 2006 Sch 7 para 5.

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## **176. Becoming a member.**

An individual who is eligible to become a member of a public benefit corporation<sup>1</sup> may do so on an application made to the corporation<sup>2</sup>. The constitution<sup>3</sup> may provide for any individual who is eligible to become a member of the staff constituency<sup>4</sup>, and invited by the corporation to become a member of that constituency (and, where there are classes within the constituency, a member of the appropriate class)<sup>5</sup>, to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so<sup>6</sup>. The constitution may provide for any individual who is eligible to become a member of the patients' constituency (otherwise than as the carer of a patient)<sup>7</sup>, and invited by the corporation to become a member of a specified constituency (and where there are classes within the constituency, a member of the specified class)<sup>8</sup>, to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so<sup>9</sup>.

1 As to eligibility for membership see PARA 175. As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.

2 National Health Service Act 2006 Sch 7 para 6(1).

3 As to the constitution see PARA 174.

4 National Health Service Act 2006 Sch 7 para 6(2)(a). As to the meaning of 'staff constituency' see PARA 175.

5 National Health Service Act 2006 Sch 7 para 6(2)(b).

6 National Health Service Act 2006 Sch 7 para 6(2).

7 National Health Service Act 2006 Sch 7 para 6(3)(a). As to the meaning of 'patients' constituency' see PARA 175. As to the meaning of 'patient' see PARA 15 note 6.

8 National Health Service Act 2006 Sch 7 para 6(3)(b). The constituency and, where applicable, class to be specified: (1) if he is eligible to be a member of any public constituency, is that constituency (Sch 7 para 6(4)(a)); (2) otherwise, is the patients' constituency and, where applicable, the class of which he is eligible to become a member (Sch 7 para 6(4)(b)). As to the meaning of 'public constituency' see PARA 175.

9 National Health Service Act 2006 Sch 7 para 6(3).

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## (C) BOARD OF GOVERNORS

### **177. Board of governors.**

A public benefit corporation<sup>1</sup> has a board of governors<sup>2</sup>. Only members of the corporation<sup>3</sup> and persons appointed under the following provisions may become or continue as members of the board<sup>4</sup>.

The members of the board other than the appointed members must be chosen by election<sup>5</sup>. Members of a constituency<sup>6</sup> or, where there are classes within it, members of each class may elect any of their number to be a member of the board<sup>7</sup>. The following may not become or continue as members of the board of governors: (1) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged<sup>8</sup>; (2) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it<sup>9</sup>; (3) a person who within the preceding five years has been convicted in the British Islands<sup>10</sup> of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him<sup>11</sup>. The constitution<sup>12</sup> may make further provision as to the circumstances in which a person may not become or continue as a member of the board<sup>13</sup>.

More than half of the members of the board of governors must be elected by members of the corporation other than those who come within the staff constituency<sup>14</sup>. At least three members of the board must be elected by the staff constituency or, where there are classes within it, at least one member of the board must be elected by each class and at least three members must be elected altogether<sup>15</sup>. At least one member of the board must be appointed by a primary care trust<sup>16</sup> for which the corporation provides goods or services<sup>17</sup>. At least one member of the board must be appointed by one or more qualifying local authorities<sup>18</sup>. If any of the corporation's hospitals<sup>19</sup> includes a medical<sup>20</sup> or dental school provided by a university<sup>21</sup>, at least one member of the board must be appointed by that university<sup>22</sup>. An organisation specified in the constitution as a partnership organisation may appoint a member of the board<sup>23</sup>.

An elected member of the board of governors may hold office for a period of three years<sup>24</sup>. Such a member is eligible for re-election at the end of that period<sup>25</sup>; but such a member ceases to hold office if he ceases to be a member of the corporation<sup>26</sup>. The corporation may pay travelling and other expenses to members of the board of governors at rates decided by the corporation<sup>27</sup>.

The constitution must: (a) provide for the chairman of the corporation or (in his absence) another person to preside at meetings of the board of governors<sup>28</sup>; (b) provide for meetings of the board of governors to be open to members of the public<sup>29</sup>, but may provide for members of the public to be excluded from a meeting for special reasons<sup>30</sup>; (c) make provision as to the conduct of elections for membership of the board<sup>31</sup>, the appointment of persons to membership<sup>32</sup>, the practice and procedure of the board<sup>33</sup>, and the removal of a member from office<sup>34</sup>. The constitution may also make further provision about the board<sup>35</sup>. The appointment of a chief executive requires the approval of the board of governors<sup>36</sup>.

<sup>1</sup> As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.

- 2 National Health Service Act 2006 Sch 7 para 7(1). As to the register of members of a board of governors and their interests see PARA 182. As to consideration of the annual accounts and report by the board of governors see PARA 185.
- 3 As to members of the corporation see PARAS 175, 176.
- 4 National Health Service Act 2006 Sch 7 para 7(2).
- 5 National Health Service Act 2006 Sch 7 para 7(3). As to the conduct of elections see PARA 178. As to voting and standing for election see PARA 179.
- 6 As to constituencies see PARA 175.
- 7 National Health Service Act 2006 Sch 7 para 7(4).
- 8 National Health Service Act 2006 Sch 7 para 8(1)(a). As to bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.
- 9 National Health Service Act 2006 Sch 7 para 8(1)(b). As to arrangements and compositions with creditors see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.
- 10 As to the meaning of 'British Islands' see PARA 15 note 8.
- 11 National Health Service Act 2006 Sch 7 para 8(1)(c).
- 12 As to the constitution see PARA 174.
- 13 National Health Service Act 2006 Sch 7 para 8(2).
- 14 National Health Service Act 2006 Sch 7 para 9(1). As to the meaning of 'staff constituency' see PARA 175.
- 15 National Health Service Act 2006 Sch 7 para 9(2).
- 16 As to primary care trusts see PARA 111.
- 17 National Health Service Act 2006 Sch 7 para 9(3). As to references to 'goods and services' see PARA 174 note 3.
- 18 National Health Service Act 2006 Sch 7 para 9(4). A qualifying local authority is a local authority for an area which includes the whole or part of an area specified in the constitution as the area for a public constituency: Sch 7 para 9(5). As to the meaning of 'local authority' see PARA 17 note 3. As to the meaning of 'public constituency' see PARA 175.
- 19 As to the meaning of 'hospital' see PARA 12 note 4.
- 20 As to the meaning of 'medical' see PARA 10 note 5.
- 21 As to the meaning of 'university' see PARA 22 note 4.
- 22 National Health Service Act 2006 Sch 7 para 9(6).
- 23 National Health Service Act 2006 Sch 7 para 9(7).
- 24 National Health Service Act 2006 Sch 7 para 10(1).
- 25 National Health Service Act 2006 Sch 7 para 10(2).
- 26 National Health Service Act 2006 Sch 7 para 10(3).
- 27 National Health Service Act 2006 Sch 7 para 11.
- 28 National Health Service Act 2006 Sch 7 para 12. As to the chairman see PARA 180.
- 29 National Health Service Act 2006 Sch 7 para 13(1).
- 30 National Health Service Act 2006 Sch 7 para 13(2).
- 31 National Health Service Act 2006 Sch 7 para 14(1)(a).



- 32 National Health Service Act 2006 Sch 7 para 14(1)(b).
- 33 National Health Service Act 2006 Sch 7 para 14(1)(c).
- 34 National Health Service Act 2006 Sch 7 para 14(1)(d).
- 35 National Health Service Act 2006 Sch 7 para 14(2).
- 36 National Health Service Act 2006 Sch 7 para 17(5). As to the appointment of the chief executive see PARA 180.

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## 178. Conduct of elections.

Regulations<sup>1</sup> may make provision as to the conduct of elections for membership of the board of governors<sup>2</sup> of an NHS foundation trust<sup>3</sup>. The regulations may in particular provide for: (1) nomination of candidates and obligations to declare their interests<sup>4</sup>; (2) systems and methods of voting, and the allocation of places on the board of governors, at contested elections<sup>5</sup>; (3) filling of vacancies<sup>6</sup>; (4) supervision of elections<sup>7</sup>; (5) elections expenses and publicity<sup>8</sup>; (6) questioning of elections and the consequences of irregularities<sup>9</sup>. The regulations may create offences<sup>10</sup>.

An NHS foundation trust must secure that its constitution<sup>11</sup> is in accordance with such regulations<sup>12</sup>. Pending the coming into force of any such regulations, elections for membership of the board of governors of an NHS foundation trust, if contested, must be by secret ballot<sup>13</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 187. At the date at which this volume states the law no such regulations had been made.

2 As to the board of governors see PARA 177.

3 National Health Service Act 2006 s 59(1). As to NHS foundation trusts see PARA 174. As to voting and standing for election see PARA 179.

4 National Health Service Act 2006 s 59(2)(a).

5 National Health Service Act 2006 s 59(2)(b).

6 National Health Service Act 2006 s 59(2)(c).

7 National Health Service Act 2006 s 59(2)(d).

8 National Health Service Act 2006 s 59(2)(e).

9 National Health Service Act 2006 s 59(2)(f).

10 National Health Service Act 2006 s 59(3). Such offences are to be punishable on summary conviction with a maximum fine not exceeding level 4 on the standard scale: s 59(3). As to the standard scale see PARA 28 note 12.

11 As to the constitution see PARA 174.

12 National Health Service Act 2006 s 59(4).

13 National Health Service Act 2006 s 59(5).

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### **179. Voting and standing for election.**

A person may not vote at an election for the board of governors of an NHS foundation trust<sup>1</sup> unless, within the specified<sup>2</sup> period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency<sup>3</sup>, or class within a constituency, for which the election is being held<sup>4</sup>. A person may not stand for election to the board unless: (1) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held<sup>5</sup>; and (2) he is not prevented<sup>6</sup> from being a member of the board<sup>7</sup>.

A person elected to the board may not vote at a meeting of the board unless: (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the trust<sup>8</sup>; and (b) he is not prevented<sup>9</sup> from being a member of the board<sup>10</sup>.

A person is guilty of an offence<sup>11</sup> if he makes a declaration under these provisions which he knows to be false in a material particular<sup>12</sup>, or recklessly makes such a declaration which is false in a material particular<sup>13</sup>.

These provisions do not apply to an election held for the staff constituency<sup>14</sup>.

1 As to NHS foundation trusts see PARA 174. As to the board of governors see PARA 177. As to elections see PARA 178.

2 'Specified' means specified in the trust's constitution: National Health Service Act 2006 s 60(5). As to the constitution see PARA 174.

3 As to constituencies see PARA 175.

4 National Health Service Act 2006 s 60(1).

5 National Health Service Act 2006 s 60(2)(a).

6 See by the National Health Service Act 2006 Sch 7 para 8: see PARA 177.

7 National Health Service Act 2006 s 60(2)(b).

8 National Health Service Act 2006 s 60(3)(a).

9 See by the National Health Service Act 2006 Sch 7 para 8: see PARA 177.

10 National Health Service Act 2006 s 60(3)(b).

11 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: National Health Service Act 2006 s 60(7). As to the standard scale see PARA 28 note 12.

12 National Health Service Act 2006 s 60(6)(a).

13 National Health Service Act 2006 s 60(6)(b).

14 National Health Service Act 2006 s 60(4). As to the meaning of 'staff constituency' see PARA 175.

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## (D) BOARD OF DIRECTORS

### 180. Board of directors.

A public benefit corporation<sup>1</sup> has a board of directors<sup>2</sup>. The board consists of executive directors, one of whom is the chief executive (and accounting officer) and another the finance director<sup>3</sup>, and non-executive directors, one of whom is the chairman<sup>4</sup>. One of the executive directors must be a registered medical practitioner<sup>5</sup> or a registered dentist<sup>6</sup>, and another must be a registered nurse or a registered midwife<sup>7</sup>. A person may not be appointed as an executive director if he is disqualified<sup>8</sup> for membership<sup>9</sup>. A person may be appointed as a non-executive director only if: (1) he is a member of a public constituency or the patients' constituency<sup>10</sup>; or (2) where any of the corporation's hospitals<sup>11</sup> includes a medical<sup>12</sup> or dental school provided by a university<sup>13</sup>, he exercises functions<sup>14</sup> for the purposes of that university<sup>15</sup>; and he is not disqualified<sup>16</sup> for membership<sup>17</sup>.

It is for the board of governors<sup>18</sup> at a general meeting to appoint or remove the chairman and the other non-executive directors<sup>19</sup>. It is for the non-executive directors to appoint or remove the chief executive<sup>20</sup>. It is for a committee consisting of the chairman, the chief executive and the other non-executive directors to appoint or remove the executive directors<sup>21</sup>. It is for the board of governors at a general meeting to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors<sup>22</sup>. The corporation must establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors; but the constitution<sup>23</sup> may make provision for those matters to be decided pending the establishment of such a committee<sup>24</sup>.

The constitution must provide for all the powers of the corporation to be exercisable by the board of directors on its behalf<sup>25</sup>; but the constitution may provide for any of those powers to be delegated to a committee of directors or to an executive director<sup>26</sup>.

1 As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.

2 National Health Service Act 2006 Sch 7 para 15(1). As to the initial directors of former primary care trusts see PARA 181. As to the register of directors and directors interests see PARA 182. The Company Directors Disqualification Act 1986 applies to NHS foundation trusts as it applies to companies within the meaning of the Act: see s 22C (added by the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 67, 68); and **COMPANIES** vol 15 (2009) PARA 1578.

3 National Health Service Act 2006 Sch 7 para 16(1)(a).

4 National Health Service Act 2006 Sch 7 para 16(1)(b). The chairman and other non-executive directors of an NHS foundation trust are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(f), Sch 1 Pt III (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 19, 20); and **PARLIAMENT** vol 78 (2010) PARA 905.

5 As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

6 I.e. a registered dentist within the meaning of the Dentists Act 1984: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 417.

7 National Health Service Act 2006 Sch 7 para 16(2). As to registered nurses and registered midwives see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 717.

- 8    le if he is within the National Health Service Act 2006 Sch 7 para 8(1): see PARA 177.
- 9    National Health Service Act 2006 Sch 7 para 16(3).
- 10   National Health Service Act 2006 Sch 7 para 16(4)(a). As to the meanings of 'public constituency' and 'patients' constituency' see PARA 175.
- 11   As to the meaning of 'hospital' see PARA 12 note 4.
- 12   As to the meaning of 'medical' see PARA 10 note 5.
- 13   As to the meaning of 'university' see PARA 22 note 4.
- 14   As to the meaning of 'functions' see PARA 6 note 3.
- 15   National Health Service Act 2006 Sch 7 para 16(4)(b).
- 16   le he is not within the National Health Service Act 2006 Sch 7 para 8(1): see PARA 177.
- 17   National Health Service Act 2006 Sch 7 para 16(4).
- 18   As to the board of governors see PARA 177.
- 19   National Health Service Act 2006 Sch 7 para 17(1). Removal of a non-executive director requires the approval of three-quarters of the members of the board: Sch 7 para 17(2). The Appointments Commission may enter into arrangements with the board of governors of an NHS foundation trust to assist the board in connection with the exercise of its powers relating to the appointment of the chairman and non-executive directors: see the Health Act 2006 s 63(1), (2)(a); and PARA 824.
- 20   National Health Service Act 2006 Sch 7 para 17(3). The appointment of a chief executive requires the approval of the board of governors: Sch 7 para 17(5). As to the appointment of the initial chief executive in the case of former primary care trusts see PARA 181.
- 21   National Health Service Act 2006 Sch 7 para 17(4).
- 22   National Health Service Act 2006 Sch 7 para 18(1).
- 23   As to the constitution see PARA 174.
- 24   National Health Service Act 2006 Sch 7 para 18(2).
- 25   National Health Service Act 2006 Sch 7 para 15(2). As to the functions of public benefit corporations see PARA 205.
- 26   National Health Service Act 2006 Sch 7 para 15(3).

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### **181. Initial directors of former NHS trusts.**

The following provisions apply, where an application<sup>1</sup> is made by an NHS trust<sup>2</sup> for authorisation to become an NHS foundation trust<sup>3</sup>, to the exercise of the powers<sup>4</sup> to appoint the initial non-executive directors and the initial chief executive<sup>5</sup>. The power to appoint the initial chairman of the corporation<sup>6</sup> must be exercised by appointing the chairman of the NHS trust, if he wishes to be appointed<sup>7</sup>. The power to appoint the other initial non-executive directors of the corporation must be exercised, so far as possible, by appointing any of the non-executive directors of the NHS trust (other than the chairman) who wish to be appointed<sup>8</sup>. A person so appointed<sup>9</sup> as the initial chairman or the other initial non-executive directors of the corporation must be appointed for the unexpired period of his term of office as chairman or non-executive director of the NHS trust; but if, on any such appointment, that period is less than 12 months<sup>10</sup>, he must be appointed for 12 months<sup>11</sup>. The power to appoint the initial chief executive of the corporation must be exercised by appointing the chief officer of the NHS trust, if he wishes to be appointed<sup>12</sup>.

1    Ie under the National Health Service Act 2006 s 33: see PARA 193.

2    As to NHS trusts see PARA 155.

3    As to NHS foundation trusts see PARA 174.

4    Ie the powers mentioned in the National Health Service Act 2006 Sch 7 para 17: see PARA 180.

5    National Health Service Act 2006 Sch 7 para 19(1). The Appointments Commission may enter into arrangements with the board of governors of an NHS foundation trust to assist the board in connection with the exercise of its powers relating to the appointment of the initial chairman and the initial non-executive directors: see the Health Act 2006 s 63(1), (2)(b); and PARA 824. As to the board of governors see PARA 177.

6    NHS foundation trusts are public benefit corporations: see PARA 174. As to the meaning of 'public benefit corporation' see PARA 174 note 1.

7    National Health Service Act 2006 Sch 7 para 19(2). The provisions of Sch 7 para 16(4)(a) and (b) (see PARA 180) do not apply to the appointment of any initial non-executive director in pursuance of Sch 7 para 19: Sch 7 para 19(6).

8    National Health Service Act 2006 Sch 7 para 19(3). See also note 7.

9    Ie in accordance with the National Health Service Act 2006 Sch 7 para 19(2) or (3): see the text to notes 7-8.

10   As to the meaning of 'month' see PARA 28 note 16.

11   National Health Service Act 2006 Sch 7 para 19(4).

12   National Health Service Act 2006 Sch 7 para 19(5). Schedule 7 para 17(5) (see PARA 180) does not apply to the appointment of the initial chief executive of the corporation in pursuance of Sch 7 para 19(5): Sch 7 para 19(6).

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## **182. Register of members.**

A public benefit corporation<sup>1</sup> must have: (1) a register of members<sup>2</sup> showing, in respect of each member, the constituency<sup>3</sup> to which he belongs and, where there are classes within it, the class to which he belongs<sup>4</sup>; (2) a register of members of the board of governors<sup>5</sup>; (3) a register of interests of the members of the board of governors<sup>6</sup>; (4) a register of directors<sup>7</sup>; (5) a register of interests of the directors<sup>8</sup>. The constitution<sup>9</sup> may make further provision about the registers including, in particular, admission to, and removal from, the registers<sup>10</sup>.

The constitution must make provision for dealing with conflicts of interest of members of the board of governors and of the directors<sup>11</sup>.

1 As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.

2 As to membership see PARA 175.

3 As to constituencies see PARA 175.

4 National Health Service Act 2006 Sch 7 para 20(1)(a).

5 National Health Service Act 2006 Sch 7 para 20(1)(b). As to the board of governors see PARA 177.

6 National Health Service Act 2006 Sch 7 para 20(1)(c).

7 National Health Service Act 2006 Sch 7 para 20(1)(d). As to directors see PARA 180.

8 National Health Service Act 2006 Sch 7 para 20(1)(e).

9 As to the constitution see PARA 174.

10 National Health Service Act 2006 Sch 7 para 20(2).

11 National Health Service Act 2006 Sch 7 para 21.

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## (E) DOCUMENTS, REPORTS AND OTHER PROVISION

### 183. Inspection of documents.

A public benefit corporation<sup>1</sup> must make the following documents available for inspection by members of the public free of charge at all reasonable times: (1) a copy of the current constitution<sup>2</sup>; (2) a copy of the current authorisation<sup>3</sup>; (3) a copy of the latest annual accounts and of any report of the auditor on them<sup>4</sup>; (4) a copy of the latest annual report<sup>5</sup>; (5) a copy of the latest information as to its forward planning<sup>6</sup>; (6) a copy of any notice<sup>7</sup> as to failure<sup>8</sup>.

Any person who requests it must be provided with a copy of or extract from any of the above documents<sup>9</sup>. The corporation is also to make those registers available for inspection by members of the public, except in circumstances prescribed<sup>10</sup>; and, so far as the registers are required to be available they must be available free of charge at all reasonable times<sup>11</sup>, and a person who requests it must be provided with a copy of or extract from them<sup>12</sup>.

1 As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.

2 National Health Service Act 2006 Sch 7 para 22(1)(a). As to the constitution see PARA 174.

3 National Health Service Act 2006 Sch 7 para 22(1)(b). As to the meaning of 'authorisation' see PARA 195 note 2.

4 National Health Service Act 2006 Sch 7 para 22(1)(c). As to accounts and their audit see PARA 204.

5 National Health Service Act 2006 Sch 7 para 22(1)(d). As to annual reports see PARA 184.

6 National Health Service Act 2006 Sch 7 para 22(1)(e). As to forward planning see PARA 184.

7 Is a notice given under the National Health Service Act 2006 s 52: see PARA 209.

8 National Health Service Act 2006 Sch 7 para 22(1)(f).

9 National Health Service Act 2006 Sch 7 para 22(2). If the person requesting a copy or extract is not a member of the corporation, the corporation may impose a reasonable charge for doing so: Sch 7 para 22(4).

10 National Health Service Act 2006 Sch 7 para 22(3). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the making of regulations see PARA 187. As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply in this case: see PARA 6. A public benefit corporation must not make any part of its register available for inspection by members of the public that shows details of: (1) where the constitution of the corporation provides for a patients' constituency, any member who belongs to that constituency where that member has not consented to his details being made so available (Public Benefit Corporation (Register of Members) Regulations 2004, SI 2004/539, reg 2(a) (amended by SI 2006/361)); or (2) any other member, if he so requests (Public Benefit Corporation (Register of Members) Regulations 2004, SI 2004/539, reg 2(b)). As to the meaning of 'patients' constituency' see PARA 175.

11 National Health Service Act 2006 Sch 7 para 22(3)(a).

12 National Health Service Act 2006 Sch 7 para 22(3)(b). If the person requesting a copy or extract is not a member of the corporation, the corporation may impose a reasonable charge for doing so: Sch 7 para 22(4).



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#### **184. Annual report and forward plan.**

A public benefit corporation<sup>1</sup> must prepare annual reports and send them to the regulator<sup>2</sup>. The reports must give information on any steps taken by the corporation to secure that (taken as a whole) the actual membership of any public constituency<sup>3</sup> and (if there is one) of the patients' constituency<sup>4</sup> is representative of those eligible for such membership<sup>5</sup>; and any other information the regulator requires<sup>6</sup>. It is for the regulator to decide the form of the reports<sup>7</sup>, when the reports must be sent to it<sup>8</sup>, and the periods to which the reports are to relate<sup>9</sup>.

A public benefit corporation must give information to the regulator as to its forward planning in respect of each financial year<sup>10</sup>. The document containing the information must be prepared by the directors<sup>11</sup>; and in preparing the document the directors must have regard to the views of the board of governors<sup>12</sup>.

1 As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.

2 National Health Service Act 2006 Sch 7 para 26(1). As to the meaning of 'regulator' see PARA 188 note 1. As to the consideration of annual reports by the board of governors see PARA 185. As to the board of governors see PARA 177.

3 As to the meaning of 'public constituency' see PARA 175.

4 As to the meaning of 'patients' constituency' see PARA 175.

5 National Health Service Act 2006 Sch 7 para 26(2)(a). As to eligibility for membership see PARA 175.

6 National Health Service Act 2006 Sch 7 para 26(2)(b).

7 National Health Service Act 2006 Sch 7 para 26(3)(a).

8 National Health Service Act 2006 Sch 7 para 26(3)(b).

9 National Health Service Act 2006 Sch 7 para 26(3)(c).

10 National Health Service Act 2006 Sch 7 para 27(1). 'Financial year' means the period beginning with the date on which the corporation is authorised under s 35 (see PARA 195) and ending with the next 31 March, and each successive period of 12 months beginning with 1 April: Sch 7 para 25(6).

11 National Health Service Act 2006 Sch 7 para 27(2). As to the directors see PARA 180.

12 National Health Service Act 2006 Sch 7 para 27(3).

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**185. Consideration of annual accounts and reports by board of governors.**

The following documents must be presented to the board of governors<sup>1</sup> of a public benefit corporation<sup>2</sup> at a general meeting: (1) the annual accounts<sup>3</sup>; (2) any report of the auditor on them<sup>4</sup>; (3) the annual report<sup>5</sup>.

1 As to the board of governors see PARA 177.

2 As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.

3 National Health Service Act 2006 Sch 7 para 28(a). As to annual accounts see PARA 204.

4 National Health Service Act 2006 Sch 7 para 28(b). As to the audit of accounts see PARA 204.

5 National Health Service Act 2006 Sch 7 para 28(c). As to the annual report see PARA 184.

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## **186. Trust funds and trustees.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for the appointment of trustees for an NHS foundation trust<sup>3</sup> to hold property on trust<sup>4</sup> for the purposes of the NHS foundation trust<sup>5</sup>, or for any purposes relating to the health service<sup>6</sup>. The order may: (1) make provision as to the persons<sup>7</sup> by whom trustees must be appointed and generally as to the method of their appointment<sup>8</sup>; (2) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State)<sup>9</sup>; (3) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate<sup>10</sup>; (4) make provision with respect to the term of office of any trustee and his removal from office<sup>11</sup>.

Where trustees have been appointed for an NHS foundation trust under these provisions, the Secretary of State may by order provide for the transfer of any trust property from the NHS foundation trust to the trustees<sup>12</sup>. Where an NHS trust<sup>13</sup> for which trustees have been appointed<sup>14</sup> is given an authorisation<sup>15</sup>, the order appointing the trustees has effect as an order under these provisions<sup>16</sup>.

1 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the National Health Service Act 2006 s 51: see PARA 6.

2 As to the making of orders see PARA 187. The NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Order 2007, SI 2007/1766, has been made.

3 As to NHS foundation trusts see PARA 174.

4 As to supplementary provision in relation to such trusts see the National Health Service Act 2006 s 217; and PARA 71. As to the transfer of trust property see s 213; and PARA 67. As to the meaning of 'property' see PARA 4 note 9.

5 National Health Service Act 2006 s 51(1)(a). 'The purposes of the NHS foundation trust' means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust): s 51(5). As to the meaning of 'hospital' see PARA 12 note 4. As to references to services see PARA 174 note 3.

6 National Health Service Act 2006 s 51(1)(b). As to the meaning of 'health service' see PARA 10 note 3.

7 As to the meaning of 'person' see PARA 17 note 2.

8 National Health Service Act 2006 s 51(2)(a).

9 National Health Service Act 2006 s 51(2)(b).

10 National Health Service Act 2006 s 51(2)(c).

11 National Health Service Act 2006 s 51(2)(d).

12 National Health Service Act 2006 s 51(3).

13 As to NHS trusts see PARA 155.

14 Ie under the National Health Service Act 2006 Sch 4 para 10: see PARA 166.

15 As to the meaning of 'authorisation' see PARA 195 note 2.

16 National Health Service Act 2006 s 51(4).

**UPDATE**

**186 Trust funds and trustees**

NOTE 2--SI 2007/1766 amended: SI 2008/1902, SI 2010/306.

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### 187. Orders and regulations.

Any power<sup>1</sup> to make an order or regulations is exercisable by statutory instrument<sup>2</sup> which is subject to annulment in pursuance of a resolution of either House of Parliament<sup>3</sup>. Certain statutory instruments<sup>4</sup> may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament<sup>5</sup>. Any order or regulations may make different provision for different purposes<sup>6</sup>, and may make incidental, supplementary, consequential, transitory or transitional or saving provision<sup>7</sup>. Any such power to make an order or regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case<sup>8</sup>.

1    le any power under the National Health Service Act 2006 Pt 2 Ch 5 (ss 30-65).

2    National Health Service Act 2006 s 64(1).

3    National Health Service Act 2006 s 64(2). This provision does not apply to a statutory instrument containing an order under s 51 (see PARA 186), s 54(4) (see PARA 211), or s 57 (see PARA 212): s 64(4). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

4    le statutory instruments containing: (1) the first regulations under the National Health Service Act 2006 s 55(4) (see PARA 211) or s 59 (see PARA 178) (s 64(3)(a)); or (2) an order or regulations making, by virtue of s 64(5)(b) (see the text to note 7), provision which amends or repeals any part of the text of an Act (s 64(3)(b)).

5    National Health Service Act 2006 s 64(3). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

6    National Health Service Act 2006 s 64(5)(a).

7    National Health Service Act 2006 s 64(5)(b).

8    National Health Service Act 2006 s 64(6).

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## ***B. INDEPENDENT REGULATOR OF NHS FOUNDATION TRUSTS***

### **188. Establishment and functions.**

There continues to be a body corporate known as the Independent Regulator of NHS Foundation Trusts<sup>1</sup>. The functions<sup>2</sup> of the regulator are to consider and give authorisations to NHS trusts and other bodies which apply to it to become NHS foundation trusts<sup>3</sup>, and to regulate such authorisations<sup>4</sup>. The regulator must exercise its functions in a manner consistent with the performance by the Secretary of State<sup>5</sup> of his duties<sup>6</sup> to promote a comprehensive health service and provide certain services, and in relation to clinical research and teaching<sup>7</sup>. The regulator must exercise its functions effectively, efficiently and economically<sup>8</sup>.

The regulator consists of a number of members (but not more than five) appointed by the Secretary of State<sup>9</sup>. One of the members must be appointed as chairman and another as deputy chairman<sup>10</sup>. A person holds and vacates office as a member in accordance with the terms of his appointment<sup>11</sup>; but he may at any time resign his office by giving notice to the Secretary of State<sup>12</sup>, and the Secretary of State may at any time remove him from office on the ground of incapacity or misbehaviour<sup>13</sup>. A person who ceases to be a member is eligible for re-appointment<sup>14</sup>.

The regulator must pay to the chairman such remuneration<sup>15</sup>, and such travelling and other allowances<sup>16</sup>, as the Secretary of State may determine<sup>17</sup>; and must pay to the members (other than the chairman) such travelling and other allowances as the Secretary of State may determine<sup>18</sup>. In the case of any such person who holds or has held office as chairman as the Secretary of State may determine, the regulator must pay such pension, allowance or gratuity to or in respect of him<sup>19</sup>, or such contributions or payments towards provision for such a pension, allowance or gratuity<sup>20</sup>, as the Secretary of State may determine<sup>21</sup>.

The regulator must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>22</sup>. The regulator's property<sup>23</sup> must not be regarded as property of, or property held on behalf of, the Crown<sup>24</sup>.

1 National Health Service Act 2006 s 31(1). The Independent Regulator of NHS Foundation Trusts is referred to in the National Health Service Act 2006 as the 'regulator': s 31(1). The Independent Regulator of NHS Foundation Trusts calls itself 'Monitor'. The Independent Regulator of NHS Foundation Trusts was established on 1 January 2004 by the Health and Social Care (Community Health and Standards) Act 2003: see ss 2 (repealed), 199(1); Health and Social Care (Community Health and Standards) Act 2003 Commencement (No 1) Order 2003, SI 2003/3346. The Independent Regulator of NHS Foundation Trusts is subject to investigation by the Parliamentary Commissioner: see the Parliamentary Commissioner Act 1967 s 4, Sch 2 (substituted by SI 2005/3430); and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**.

2 As to the meaning of 'functions' see PARA 6 note 3. As to the powers of the regulator see PARA 189. As to arrangements for the discharge of functions see PARA 190.

3 See the National Health Service Act 2006 ss 33-39; and PARAS 193-198. See also ss 56, 57 in respect of applications for mergers of trusts; and PARA 212. As to NHS foundation trusts as public benefit corporations see PARA 174. As to the meaning of 'public benefit corporation' see PARA 174 note 1.

4 See the National Health Service Act 2006 ss 52-55; and PARAS 209-211. Corporations must submit annual reports to the regulator and give information to it as to their forward planning: see Sch 7 paras 26, 27; and PARA 184.

- 5 As to the Secretary of State see PARA 6 note 8.
- 6 le his duties under the National Health Service Act 2006 s 1 (see PARA 10), s 3 (see PARA 12) and s 258 (see PARA 22).
- 7 National Health Service Act 2006 s 32. The regulator must co-operate with the Commission for Healthcare Audit and Inspection in the exercise of its functions: see PARA 581.
- 8 National Health Service Act 2006 Sch 8 para 16(3).
- 9 National Health Service Act 2006 Sch 8 para 1(1). As to the delegation to the Appointments Commission of the Secretary of State's power of appointment see the Health Act 2006 s 58, Sch 5; and PARA 820.
- 10 National Health Service Act 2006 Sch 8 para 1(2). The deputy chairman need not be appointed before the end of the period of six months beginning with the establishment of the regulator: Sch 8 para 1(3). As to the meaning of 'month' see PARA 28 note 16. The chairman and other members of the Independent Regulator of NHS Foundation Trusts are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 2(2), Sch 2 para 18); and **PARLIAMENT** vol 78 (2010) PARA 905. Such persons are also disqualified for membership of the Northern Ireland Assembly: see the Northern Ireland Assembly Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 2 para 19). As to the Northern Ireland Assembly see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 11 National Health Service Act 2006 Sch 8 para 2(1). A person must not be appointed as a member for a period of more than four years: Sch 8 para 2(3).
- 12 National Health Service Act 2006 Sch 8 para 2(2)(a).
- 13 National Health Service Act 2006 Sch 8 para 2(2)(b).
- 14 National Health Service Act 2006 Sch 8 para 2(4).
- 15 National Health Service Act 2006 Sch 8 para 3(1)(a).
- 16 National Health Service Act 2006 Sch 8 para 3(1)(b).
- 17 National Health Service Act 2006 Sch 8 para 3(1).
- 18 National Health Service Act 2006 Sch 8 para 3(2).
- 19 National Health Service Act 2006 Sch 8 para 3(3)(a).
- 20 National Health Service Act 2006 Sch 8 para 3(3)(b).
- 21 National Health Service Act 2006 Sch 8 para 3(3). Where a person is an active or deferred member of a scheme under the Superannuation Act 1972 s 1 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 567), and he is appointed as chairman, the Minister for the Civil Service may determine that the person's term of office as chairman must be treated for the purposes of the scheme as service in the employment by reference to which he is a member (whether or not any benefits are payable by virtue of the National Health Service Act 2006 Sch 8 para 3(3)): Sch 8 para 5(1), (2). The regulator must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as he may determine in respect of any increase attributable to Sch 8 para 5(2) in the sums payable out of money provided by Parliament under the Superannuation Act 1972: National Health Service Act 2006 Sch 8 para 5(3). As to the Minister for the Civil Service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 427 et seq. As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.
- 22 National Health Service Act 2006 Sch 8 para 16(1). As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.
- 23 As to the meaning of 'property' see PARA 4 note 9.
- 24 National Health Service Act 2006 Sch 8 para 16(2).

## UPDATE

### 188 Establishment and functions

NOTE 10--Northern Ireland Assembly Disqualification Act 1975 Sch 1 Pt III amended: SI 2009/1941.

NOTE 13--Alternatively, the Secretary of State may suspend him from office on the ground of incapacity or misbehaviour: see National Health Service Act 2006 Sch 8 paras 2(2)(c), 2A (added by the Health Act 2009 Sch 3 para 12).



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## **189. Powers.**

Anything which the regulator<sup>1</sup> is authorised or required to do may be done by the chairman or deputy chairman, any committee<sup>2</sup>, or any member of the staff<sup>3</sup>, if authorised by the regulator (generally or specifically) for that purpose<sup>4</sup>. The regulator may do anything which appears to it to be necessary or expedient for the purposes of or in connection with the exercise of its functions<sup>5</sup>; including in particular acquiring and disposing of property<sup>6</sup>, entering into contracts<sup>7</sup>, accepting gifts of property<sup>8</sup>, and co-operating with other public authorities<sup>9</sup>.

The regulator may, after consulting the Minister for the Civil Service<sup>10</sup> as to numbers and terms and conditions of service, employ such staff as the regulator may determine<sup>11</sup>. The regulator may with the consent of the Secretary of State<sup>12</sup> borrow money temporarily by way of overdraft, but may not otherwise borrow money<sup>13</sup>. The regulator may conduct, commission or assist the conduct of research<sup>14</sup>.

1 As to the meaning of 'regulator' see PARA 188 note 1. As to the functions of the regulator see PARA 188. As to arrangements for the discharge of functions see PARA 190.

2 National Health Service Act 2006 Sch 8 para 7(a). As to the chairman and the deputy chairman see PARA 188.

3 National Health Service Act 2006 Sch 8 para 7(b).

4 National Health Service Act 2006 Sch 8 para 7.

5 National Health Service Act 2006 Sch 8 para 8(1). As to the meaning of 'functions' see PARA 6 note 3.

6 National Health Service Act 2006 Sch 8 para 8(2)(a). As to the meaning of 'property' see PARA 4 note 9.

7 National Health Service Act 2006 Sch 8 para 8(2)(b).

8 National Health Service Act 2006 Sch 8 para 8(2)(c).

9 National Health Service Act 2006 Sch 8 para 8(2).

10 As to the Minister for the Civil Service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 427 et seq.

11 National Health Service Act 2006 Sch 8 para 4.

12 As to the Secretary of State see PARA 6 note 8.

13 National Health Service Act 2006 Sch 8 para 9(1). As to finance and accounts see PARA 191.

14 National Health Service Act 2006 Sch 8 para 9(2).

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### **190. Procedure and documents.**

The regulator<sup>1</sup> may regulate its own procedure and make any arrangements it considers appropriate for the discharge of its functions<sup>2</sup>. The validity of any act of the regulator is not affected by any vacancy among the members or by any defect in the appointment of any member<sup>3</sup>.

The application of the regulator's seal must be authenticated by the signature of the chairman or deputy chairman<sup>4</sup> or of any member of the staff<sup>5</sup> who has been authorised by the regulator (whether generally or specifically) for that purpose<sup>6</sup>. A document purporting to be duly executed under the regulator's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed<sup>7</sup>.

1 As to the meaning of 'regulator' see PARA 188 note 1.

2 National Health Service Act 2006 Sch 8 para 6(1). As to the meaning of 'functions' see PARA 6 note 3. As to the functions of the regulator see PARA 188. As to the powers of the regulator see PARA 189.

3 National Health Service Act 2006 Sch 8 para 6(2). As to membership and the appointment of members see PARA 188.

4 As to the chairman and deputy chairman see PARA 188.

5 As to the power to appoint staff see PARA 189.

6 National Health Service Act 2006 Sch 8 para 14.

7 National Health Service Act 2006 Sch 8 para 15.

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## **191. Finance and accounts.**

The Secretary of State<sup>1</sup> may make contributions towards the regulator's<sup>2</sup> expenses<sup>3</sup>. The regulator must keep accounts in such form as the Secretary of State may direct<sup>4</sup>. The regulator must prepare in respect of each financial year<sup>5</sup> annual accounts in such form as the Secretary of State may direct<sup>6</sup>. The regulator must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General<sup>7</sup> within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct<sup>8</sup>. The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of them and of his report before Parliament<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply in this case: see PARA 6.

2 As to the meaning of 'regulator' see PARA 188 note 1.

3 National Health Service Act 2006 Sch 8 para 10. As to the power of the regulator to charge fees see s 50; and PARA 195.

4 National Health Service Act 2006 Sch 8 para 12(1). A direction under Sch 8 para 12 must be given by instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

5 'Financial year' means the period beginning with the establishment of the regulator and ending with the next 31 March, and each successive period of 12 months beginning with 1 April: National Health Service Act 2006 Sch 8 para 12(5). As to the establishment of the regulator see PARA 188. As to the meaning of 'month' see PARA 28 note 16.

6 National Health Service Act 2006 Sch 8 para 12(2). See also note 4.

7 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

8 National Health Service Act 2006 Sch 8 para 12(3). See also note 4.

9 National Health Service Act 2006 Sch 8 para 12(4). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

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## **192. Annual and other reports.**

As soon as possible after the end of each financial year<sup>1</sup>, the regulator<sup>2</sup> must prepare an annual report on how it has exercised its functions<sup>3</sup> during the year<sup>4</sup>. The regulator must also, in respect of each financial year, prepare a report which provides an overall summary of the accounts of NHS foundation trusts<sup>5</sup>, which report must be prepared as soon as possible after the regulator has received the accounts of all NHS foundation trusts for the relevant financial year<sup>6</sup>. The regulator must lay a copy of these reports<sup>7</sup> before Parliament<sup>8</sup>, and once it has done so, send a copy of it to the Secretary of State<sup>9</sup>. The regulator must provide the Secretary of State with such other reports and information relating to the exercise of the regulator's functions as he may require<sup>10</sup>.

The regulator must respond in writing<sup>11</sup> to any recommendation which is made by a committee of either House of Parliament, or a committee of both Houses<sup>12</sup>, and relates to the exercise by the regulator of its functions<sup>13</sup>.

1 As to the meaning of 'financial year' see PARA 191 note 5.

2 As to the meaning of 'regulator' see PARA 188 note 1.

3 As to the meaning of 'functions' see PARA 6 note 3. As to the functions of the regulator see PARA 188. As to the powers of the regulator see PARA 189.

4 National Health Service Act 2006 Sch 8 para 11(1).

5 National Health Service Act 2006 Sch 8 para 11(3). As to NHS foundation trusts see PARA 174.

6 National Health Service Act 2006 Sch 8 para 11(4). As to the duty of NHS foundation trusts to prepare accounts and provide copies to the regulator see PARA 204.

7 See the reports under the National Health Service Act 2006 Sch 8 para 11(1) and (3): see the text to notes 1-5.

8 National Health Service Act 2006 Sch 8 para 11(2)(a), (5)(a). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

9 National Health Service Act 2006 Sch 8 para 11(2)(b), (5)(b). As to the Secretary of State see PARA 6 note 8.

10 National Health Service Act 2006 Sch 8 para 11(6).

11 As to the meaning of 'writing' see PARA 7 note 2.

12 National Health Service Act 2006 Sch 8 para 13(a). As to Parliamentary committees see **PARLIAMENT** vol 78 (2010) PARA 870 et seq.

13 National Health Service Act 2006 Sch 8 para 13(b).

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### ***C. AUTHORISATION OF NHS FOUNDATION TRUSTS***

#### **193. Applications by NHS trusts.**

An NHS trust<sup>1</sup> may make an application to the regulator<sup>2</sup> for authorisation<sup>3</sup> to become an NHS foundation trust<sup>4</sup>, if the application is supported by the Secretary of State<sup>5</sup>. The application must describe the goods and services<sup>6</sup> which the applicant proposes should be provided by the NHS foundation trust<sup>7</sup>, be accompanied by a copy of the proposed constitution<sup>8</sup> of the NHS foundation trust<sup>9</sup>, and must give any further information which the regulator requires the applicant to give<sup>10</sup>. The applicant may modify the application with the agreement of the regulator at any time before authorisation is given<sup>11</sup>.

Once an NHS trust has made the application: (1) the provisions of the proposed constitution<sup>12</sup> have effect, but only for the purpose of establishing the initial membership of the NHS foundation trust<sup>13</sup> and of the board of governors<sup>14</sup>, and the initial directors<sup>15</sup>, and enabling the board of governors and board of directors to make preparations for the performance of their functions<sup>16</sup>; (2) the NHS trust may do anything<sup>17</sup> which appears to it to be necessary or expedient for the purpose of preparing it for NHS foundation trust status<sup>18</sup>.

1 As to NHS trusts see PARA 155.

2 As to the meaning of 'regulator' see PARA 188 note 1.

3 As to the meaning of 'authorisation' see PARA 195 note 2.

4 As to NHS foundation trusts see PARA 174.

5 National Health Service Act 2006 s 33(1). As to the Secretary of State see PARA 6 note 8. As to the giving of authorisation see PARA 195; and as to the effect of authorisation see PARA 196. As to the register of NHS foundation trusts see PARA 198.

6 As to references to 'goods and services' see PARA 174 note 3.

7 National Health Service Act 2006 s 33(2)(a).

8 As to the constitution see PARA 174.

9 National Health Service Act 2006 s 33(2)(b).

10 National Health Service Act 2006 s 33(2).

11 National Health Service Act 2006 s 33(3).

12 I.e. the provisions of the proposed constitution which give effect to the National Health Service Act 2006 Sch 7 paras 3-19: see PARAS 175-177, 180, 181.

13 As to membership see PARAS 175, 176.

14 As to the board of governors see PARA 177.

15 As to the initial directors see PARA 181.

16 National Health Service Act 2006 s 33(4)(a). As to the meaning of 'functions' see PARA 6 note 3.

17    le including the things mentioned in the National Health Service Act 2006 s 25(4), Sch 4 para 14: see PARA  
168.

18    National Health Service Act 2006 s 33(4)(b).

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#### 194. Other applications.

An application may be made to the regulator<sup>1</sup> by persons<sup>2</sup> (other than an NHS trust<sup>3</sup>) to be incorporated as a public benefit corporation<sup>4</sup> and authorised to become an NHS foundation trust<sup>5</sup>, if the application is supported by the Secretary of State<sup>6</sup>. The application must describe the goods and services<sup>7</sup> which the applicants propose should be provided by the NHS foundation trust<sup>8</sup>, be accompanied by a copy of the proposed constitution<sup>9</sup> of the NHS foundation trust<sup>10</sup>, and must give any further information which the regulator requires the applicants to give<sup>11</sup>.

If it appears to the regulator that:

- 119 (1) provision of the goods and services described in the application is likely to assist in the performance of the general duties<sup>12</sup> of the regulator<sup>13</sup>;
- 120 (2) the trust as proposed to be constituted will be able to provide those goods and services<sup>14</sup>; and
- 121 (3) the proposed constitution accords with the statutory provisions<sup>15</sup> and is otherwise appropriate<sup>16</sup>,

the regulator may issue a certificate of incorporation<sup>17</sup>. The applicants may modify the application with the agreement of the regulator at any time before the certificate is issued<sup>18</sup>. On the issue of the certificate, the applicants are incorporated as a public benefit corporation<sup>19</sup>.

Once the certificate has been issued: (a) the proposed constitution has effect, but the applicants may exercise the functions<sup>20</sup> of the corporation on its behalf until a board of directors is appointed in accordance with the constitution<sup>21</sup>; (b) the corporation may do anything<sup>22</sup> which appears to it to be necessary or expedient for the purpose of preparing it for NHS foundation trust status<sup>23</sup>.

1 As to the meaning of 'regulator' see PARA 188 note 1.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to NHS trusts see PARA 155. As to applications by NHS trusts see PARA 193.

4 As to the meaning of 'public benefit corporation' see PARA 174 note 1.

5 As to NHS foundation trusts as public benefit corporations see PARA 174.

6 National Health Service Act 2006 s 34(1). As to the Secretary of State see PARA 6 note 8. As to the giving of authorisation see PARA 195; and as to the effect of authorisation see PARA 196. As to the register of NHS foundation trusts see PARA 198.

7 As to references to 'goods and services' see PARA 174 note 3.

8 National Health Service Act 2006 s 34(2)(a).

9 As to the constitution see PARA 174.

10 National Health Service Act 2006 s 34(2)(b).

11 National Health Service Act 2006 s 34(2).

- 12    le the duties mentioned in the National Health Service Act 2006 s 32: see PARA 188.
- 13    National Health Service Act 2006 s 34(3)(a).
- 14    National Health Service Act 2006 s 34(3)(b).
- 15    le with the National Health Service Act 2006 Sch 7: see PARAS 174-177, 180-185.
- 16    National Health Service Act 2006 s 34(3)(c).
- 17    National Health Service Act 2006 s 34(3). The certificate is conclusive evidence of incorporation: s 34(6).  
As to conclusive evidence see **CIVIL PROCEDURE** vol 11 (2009) PARA 767.
- 18    National Health Service Act 2006 s 34(4).
- 19    National Health Service Act 2006 s 34(5).
- 20    As to the meaning of 'functions' see PARA 6 note 3.
- 21    National Health Service Act 2006 s 34(7)(a). As to the board of directors see PARA 180.
- 22    le including the things mentioned in the National Health Service Act 2006 s 47: see PARA 207.
- 23    National Health Service Act 2006 s 34(7)(b).



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### **195. Giving of authorisation.**

The regulator<sup>1</sup> may give an authorisation<sup>2</sup> to an NHS trust<sup>3</sup> which has applied<sup>4</sup> to become an NHS foundation trust<sup>5</sup>, or to a public benefit corporation<sup>6</sup>, if the regulator is satisfied as to the following matters<sup>7</sup>. The matters are that:

- 122 (1) the applicant's constitution<sup>8</sup> will be in accordance with the statutory requirements<sup>9</sup> and will otherwise be appropriate<sup>10</sup>;
- 123 (2) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency<sup>11</sup>, and (if there is one) of the patients' constituency<sup>12</sup>, will be representative of those eligible for such membership<sup>13</sup>;
- 124 (3) there will be a board of governors<sup>14</sup>, and a board of directors<sup>15</sup>, constituted in accordance with the constitution<sup>16</sup>;
- 125 (4) the steps necessary to prepare for NHS foundation trust status have been taken<sup>17</sup>;
- 126 (5) the applicant will be able to provide the goods and services<sup>18</sup> which the authorisation will require it to provide<sup>19</sup>; and
- 127 (6) any other requirements which the regulator considers appropriate are met<sup>20</sup>.

In deciding whether it is satisfied as to these matters, the regulator must consider (among other things), any report or recommendation in respect of the applicant made by the Commission for Healthcare Audit and Inspection<sup>21</sup>, and the financial position of the applicant<sup>22</sup>.

The regulator must not give an authorisation unless it is satisfied that the applicant has sought the views about the application of the following: (a) individuals who live in any area specified in the proposed constitution as the area for a public constituency<sup>23</sup>; (b) any local authority<sup>24</sup> that would be authorised by the proposed constitution to appoint a member of the board of governors<sup>25</sup>; (c) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency<sup>26</sup>; (d) any prescribed persons<sup>27</sup>. If regulations make provision about consultation, the regulator may not give an authorisation unless it is satisfied that the applicant has complied with the regulations<sup>28</sup>.

The authorisation may be given on any terms the regulator considers appropriate<sup>29</sup>. An authorisation must require an NHS foundation trust to disclose such information to the regulator as the Secretary of State specifies<sup>30</sup>, and may require an NHS foundation trust to disclose other information to the regulator<sup>31</sup>. An authorisation may require an NHS foundation trust to allow the regulator to enter and inspect premises owned or controlled by the trust<sup>32</sup>; and may require an NHS foundation trust to pay a reasonable annual fee to the regulator<sup>33</sup>.

1 As to the meaning of 'regulator' see PARA 188 note 1.

2 'Authorisation' means an authorisation under the National Health Service Act 2006 s 35 or s 56 (see PARA 212): s 65(1). As to the effect of authorisation see PARA 196; and as to variation of authorisation see PARA 197.

3 As to NHS trusts see PARA 155.

4 ie under the National Health Service Act 2006 s 33: see PARA 193.

5 National Health Service Act 2006 s 35(1)(a). As to NHS foundation trusts see PARA 174.

- 6 National Health Service Act 2006 s 35(1)(b). As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to applications for authorisation by bodies other than NHS trusts see PARA 194.
- 7 National Health Service Act 2006 s 35(1). Where the regulator refuses to give an authorisation to a public benefit corporation the powers as to dissolution etc conferred by s 54 are exercisable: see s 54(9); and PARA 211. An authorisation must make provision as to the goods and services to be provided by an NHS foundation trust: see s 43; and PARA 205.
- 8 As to the constitution see PARA 174.
- 9 le in accordance with the National Health Service Act 2006 Sch 7: see PARAS 174-177, 180-185.
- 10 National Health Service Act 2006 s 35(2)(a).
- 11 As to the meaning of 'public constituency' see PARA 175.
- 12 As to the meaning of 'patients' constituency' see PARA 175.
- 13 National Health Service Act 2006 s 35(2)(b).
- 14 As to the board of governors see PARA 177.
- 15 As to the board of directors see PARA 180.
- 16 National Health Service Act 2006 s 35(2)(c).
- 17 National Health Service Act 2006 s 35(2)(d).
- 18 As to references to 'goods and services' see PARA 174 note 3. As to the meaning of 'goods' see PARA 12 note 7.
- 19 National Health Service Act 2006 s 35(2)(e).
- 20 National Health Service Act 2006 s 35(2)(f).
- 21 National Health Service Act 2006 s 35(3)(a). As to the Commission for Healthcare Audit and Inspection see PARA 552 et seq.
- 22 National Health Service Act 2006 s 35(3)(b).
- 23 National Health Service Act 2006 s 35(5)(b).
- 24 As to the meaning of 'local authority' see PARA 17 note 3.
- 25 National Health Service Act 2006 s 35(5)(c).
- 26 National Health Service Act 2006 s 35(5)(d).
- 27 National Health Service Act 2006 s 35(5)(e). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the Secretary of State see PARA 6 note 8. As to the meaning of 'person' see PARA 17 note 2. As to the making of regulations see PARA 187. At the date at which this volume states the law no such regulations had been made.
- 28 National Health Service Act 2006 s 35(6). At the date at which this volume states the law no such regulations had been made.
- 29 National Health Service Act 2006 s 35(4). The generality of the power in s 35(4) is not affected by the provisions of ss 36-65 (see PARA 196 et seq): s 35(7). An authorisation may require an NHS foundation trust to take steps to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership: s 61. As to the limitation by the authorisation of a trust's borrowing limit see PARA 202.
- 30 National Health Service Act 2006 s 48(1)(a).
- 31 National Health Service Act 2006 s 48(1)(b). The regulator may require any other health service body to disclose any information which the regulator requires for the purposes of its functions: s 48(2). 'Health service body' means a strategic health authority, a primary care trust, an NHS trust, a special health authority or an

NHS foundation trust: s 65(1). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111. As to the special health authorities see PARA 136. As to the regulator's functions see PARA 188.

32 National Health Service Act 2006 s 49.

33 National Health Service Act 2006 s 50 (not yet in force). Section 50 comes into force immediately after, and to the extent that, the Health and Social Care (Community Health and Standards) Act 2003 s 21 is brought into force: see the National Health Service Act 2006 s 277(3)(c), (4). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health and Social Care (Community Health and Standards) Act 2003 s 21 is repealed but such repeal does not take effect until s 21 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(d), (5), (6). The Health and Social Care (Community Health and Standards) Act 2003 s 21 comes into force on such day as the Secretary of State may by order appoint: see s 199(1)-(3). At the date at which this volume states the law no such day had been appointed.

## **UPDATE**

### **195 Giving of authorisation**

TEXT AND NOTE 21--Now made by the Care Quality Commission: National Health Service Act 2006 s 35(3)(a) (amended by the Health and Social Care Act 2008 Sch 5 para 83).

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## **196. Effect of authorisation.**

On an authorisation being given<sup>1</sup> to a body corporate which is an NHS trust<sup>2</sup>, it ceases to be an NHS trust and becomes an NHS foundation trust<sup>3</sup>, the proposed constitution has effect<sup>4</sup>, and any order establishing the NHS trust<sup>5</sup> is revoked<sup>6</sup>. On an authorisation being given to a body corporate which is a public benefit corporation<sup>7</sup>, it becomes an NHS foundation trust<sup>8</sup>. The authorisation is conclusive evidence<sup>9</sup> that the body in question is an NHS foundation trust<sup>10</sup>.

An NHS foundation trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>11</sup>; and an NHS foundation trust's property<sup>12</sup> must not be regarded as property of, or property held on behalf of, the Crown<sup>13</sup>. The validity of any act of an NHS foundation trust is not affected by any vacancy among the directors or by any defect in the appointment of any director<sup>14</sup>.

1 As to the meaning of 'authorisation' see PARA 195 note 2. As to the giving of authorisation see PARA 195. As to the variation of authorisation see PARA 197.

2 As to NHS trusts see PARA 155. As to applications for authorisation by NHS trusts see PARA 193.

3 National Health Service Act 2006 s 36(1)(a). As to NHS foundation trusts see PARA 174. As to the register of NHS foundation trusts see PARA 198.

4 National Health Service Act 2006 s 36(1)(b). As to the constitution see PARA 174.

5 If an order under the National Health Service Act 2006 s 25(1): see PARA 155.

6 National Health Service Act 2006 s 36(1)(c).

7 As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to applications for authorisation by bodies other than NHS trusts see PARA 194.

8 National Health Service Act 2006 s 36(2).

9 As to conclusive evidence see **CIVIL PROCEDURE** vol 11 (2009) PARA 767.

10 National Health Service Act 2006 s 36(3). Section 36(1)-(3) do not affect the continuity of the body or of its property or liabilities (including its criminal liabilities): s 36(4).

11 As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

12 As to the meaning of 'property' see PARA 4 note 9.

13 National Health Service Act 2006 s 36(6).

14 National Health Service Act 2006 s 36(5). As to the board of directors see PARA 180.

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### **197. Variation of authorisation.**

The regulator<sup>1</sup> may vary an authorisation<sup>2</sup>. In deciding whether or not to vary an authorisation, the regulator must have regard (among other things) to any report or recommendation made to it<sup>3</sup> by the overview and scrutiny committee of a local authority<sup>4</sup>.

1 As to the meaning of 'regulator' see PARA 188 note 1.

2 National Health Service Act 2006 s 38(1). As to the meaning of 'authorisation' see PARA 195 note 2. As to applications for authorisation see PARAS 193, 194. As to the giving of authorisation see PARA 195. As to the effect of authorisation see PARA 196.

3 Ie by virtue of the Local Government Act 2000 s 21(2)(f): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 342.

4 National Health Service Act 2006 s 38(2)(a). As to overview and scrutiny committees see PARA 536 et seq.

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## **198. Register.**

The regulator<sup>1</sup> must continue to maintain a register of NHS foundation trusts<sup>2</sup>. The register must contain in relation to each NHS foundation trust: (1) a copy of the current constitution<sup>3</sup>; (2) a copy of the current authorisation<sup>4</sup>; (3) a copy of the latest annual accounts and of any report of the auditor on them<sup>5</sup>; (4) a copy of the latest annual report<sup>6</sup>; (5) a copy of the latest document sent to the regulator<sup>7</sup> in respect of forward planning<sup>8</sup>; (6) a copy of any notice<sup>9</sup> of failure<sup>10</sup>. In relation to any time before an NHS foundation trust is first required to send an annual report to the regulator<sup>11</sup>, the register must contain a list of the persons who were first elected or appointed as the members of the board of governors<sup>12</sup>, and the directors<sup>13</sup>.

Members of the public may inspect the register at any reasonable time<sup>14</sup>. Any person who requests it must be provided with a copy of, or extract from, any document contained in the register on payment of a reasonable charge<sup>15</sup>.

1 As to the meaning of 'regulator' see PARA 188 note 1.

2 National Health Service Act 2006 s 39(1). As to NHS foundation trusts see PARA 174.

3 National Health Service Act 2006 s 39(2)(a). As to the constitution see PARA 174. As to the power of an NHS foundation trust to vary its constitution see s 37; and PARA 174.

4 National Health Service Act 2006 s 39(2)(b). As to the meaning of 'authorisation' see PARA 195 note 2. As to the giving of authorisation see PARA 195.

5 National Health Service Act 2006 s 39(2)(c). As to accounts see PARA 191.

6 National Health Service Act 2006 s 39(2)(d). As to the annual report see PARA 192.

7 Ie under the National Health Service Act 2006 Sch 7 para 27: see PARA 184.

8 National Health Service Act 2006 s 39(2)(e).

9 Ie given under the National Health Service Act 2006 s 52: see PARA 209.

10 National Health Service Act 2006 s 39(2)(f).

11 As to such requirement see PARA 184.

12 National Health Service Act 2006 s 39(3)(a). As to the board of governors see PARA 177.

13 National Health Service Act 2006 s 39(3)(b). As to the board of directors see PARA 180.

14 National Health Service Act 2006 s 39(4).

15 National Health Service Act 2006 s 39(5).

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## ***D. FINANCIAL MATTERS***

### **199. Financial assistance from the Secretary of State.**

The Secretary of State<sup>1</sup> may give financial assistance to any NHS foundation trust<sup>2</sup>. The financial assistance may be given by way of loan, public dividend capital, grant or other payment<sup>3</sup>. The Secretary of State may guarantee the payment of any amount payable by an NHS foundation trust under an externally financed development agreement<sup>4</sup>.

1 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the National Health Service Act 2006 s 40: see PARA 6.

2 National Health Service Act 2006 s 40(1). As to NHS foundation trusts see PARA 174. As to the financial powers of NHS foundation trusts see s 46; and PARA 202.

3 National Health Service Act 2006 s 40(2). Any amount issued to an NHS foundation trust as public dividend capital under s 40 is an asset of the Consolidated Fund: s 42(2). As to public dividend capital see further PARA 201. As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

4 National Health Service Act 2006 s 40(3). 'Externally financed development agreement' has the same meaning as in Sch 4 para 23 (see PARA 170), reading references in para 23(3) and (5) to the NHS trust as references to the NHS foundation trust: s 40(4).

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## **200. Prudential borrowing code.**

The regulator<sup>1</sup> may revise the code<sup>2</sup> for determining the limit on the total amount of the borrowing of any NHS foundation trust<sup>3</sup>. Before revising the code, the regulator must consult the Secretary of State<sup>4</sup>, each NHS foundation trust<sup>5</sup>, each NHS trust<sup>6</sup> intending to make an application to become an NHS foundation trust<sup>7</sup>, and such other persons<sup>8</sup> as the regulator considers appropriate<sup>9</sup>. In revising the code the regulator must have regard (among other things) to any generally accepted principles used by financial institutions to determine the amounts of loans to non profit making bodies<sup>10</sup>. The regulator must lay a copy of the revised code before Parliament<sup>11</sup>.

1 As to the meaning of 'regulator' see PARA 188 note 1.

2 Ie the code made under the Health and Social Care (Community Health and Standards) Act 2003 s 12(1) (repealed).

3 National Health Service Act 2006 s 41(1). As to NHS foundation trusts see PARA 174. As to the power of NHS foundation trusts to borrow see PARA 202.

4 National Health Service Act 2006 s 41(4)(a). As to the Secretary of State see PARA 6 note 8. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

5 National Health Service Act 2006 s 41(4)(b).

6 As to NHS trusts see PARA 155.

7 National Health Service Act 2006 s 41(4)(c). As to applications by NHS trusts to become NHS foundation trusts see PARA 193.

8 As to the meaning of 'person' see PARA 17 note 2.

9 National Health Service Act 2006 s 41(4)(d).

10 National Health Service Act 2006 s 41(2). A body is non profit making if it does not carry on activities for the purpose of making profits for distribution to its members or others: s 41(3).

11 National Health Service Act 2006 s 41(5). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.



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## 201. Public dividend capital.

Where an NHS trust<sup>1</sup> becomes an NHS foundation trust<sup>2</sup>, the amount which was the public dividend capital of the NHS trust immediately before the giving of the authorisation<sup>3</sup> (known as 'initial public dividend capital'), continues as public dividend capital of the NHS foundation trust held on the same conditions, but subject to the following provisions<sup>4</sup>. Any amount issued to an NHS foundation trust as public dividend capital<sup>5</sup> is, like initial public dividend capital, an asset of the Consolidated Fund<sup>6</sup>.

The Secretary of State<sup>7</sup> may, with the consent of the Treasury<sup>8</sup>, decide the terms on which any public dividend capital of an NHS foundation trust must be treated as having been issued<sup>9</sup>; but the dividend to be paid by the trust must be the same as that payable<sup>10</sup> by NHS trusts in England<sup>11</sup>. Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital must be paid into the Consolidated Fund<sup>12</sup>.

1 As to NHS trusts see PARA 155.

2 As to NHS foundation trusts see PARA 174. As to applications by NHS trusts becomes NHS foundation trusts see PARA 193.

3 As to the meaning of 'authorisation' see PARA 195 note 2. As to the giving of authorisation see PARA 195.

4 National Health Service Act 2006 s 42(1).

5 Ie under the National Health Service Act 2006 s 40: see PARA 199.

6 National Health Service Act 2006 s 42(2). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

7 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the National Health Service Act 2006 s 42: see PARA 6.

8 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

9 National Health Service Act 2006 s 42(3). Before exercising the power in s 42(3), the Secretary of State must consult the regulator: s 42(5). As to the meaning of 'regulator' see PARA 188 note 1. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

10 Ie under the National Health Service Act 2006 Sch 5 para 1(6): see PARA 513.

11 National Health Service Act 2006 s 42(4). As to the meaning of 'England' see PARA 6 note 2.

12 National Health Service Act 2006 s 42(6).

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## **202. Powers to borrow, invest, and give financial assistance.**

An NHS foundation trust<sup>1</sup> may borrow money for the purposes of or in connection with its functions<sup>2</sup>; but the total amount of the NHS foundation trust's borrowing is subject to the limit imposed by its authorisation<sup>3</sup>. The limit must be reviewed annually by the regulator<sup>4</sup>.

An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions<sup>5</sup>. The investment may include investment by forming, or participating in forming, bodies corporate<sup>6</sup>, and otherwise acquiring membership of bodies corporate<sup>7</sup>.

An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person<sup>8</sup> for the purposes of or in connection with its functions<sup>9</sup>.

1 As to NHS foundation trusts see PARA 174.

2 National Health Service Act 2006 s 46(1). As to the meaning of 'functions' see PARA 6 note 3. As to the functions of NHS foundation trusts see PARA 205. As to the power of the Secretary of State to give financial assistance see PARA 199. As to the Secretary of State see PARA 6 note 8.

3 National Health Service Act 2006 s 46(2). As to the meaning of 'authorisation' see PARA 195 note 2. As to the giving of authorisation see PARA 195. As to the prudential borrowing code determining borrowing limits see PARA 200.

4 National Health Service Act 2006 s 46(3). As to the meaning of 'regulator' see PARA 188 note 1.

5 National Health Service Act 2006 s 46(4). As to trusts see PARA 186.

6 National Health Service Act 2006 s 46(5)(a). As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**.

7 National Health Service Act 2006 s 46(5)(b).

8 As to the meaning of 'person' see PARA 17 note 2.

9 National Health Service Act 2006 s 46(6).

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### **203. Auditor.**

A public benefit corporation<sup>1</sup> must have an auditor<sup>2</sup>. It is for the board of governors<sup>3</sup> to appoint or remove the auditor at a general meeting of the board<sup>4</sup>. The corporation must establish a committee of non-executive directors<sup>5</sup> as an audit committee to perform such monitoring, reviewing and other functions<sup>6</sup> as are appropriate<sup>7</sup>.

In auditing the accounts of any NHS foundation trust an auditor must by examination of the accounts and otherwise satisfy himself that: (1) they are prepared in accordance with directions<sup>8</sup> given by the regulator<sup>9</sup>; (2) they comply with the requirements of all other provisions contained in, or having effect under, any enactment which are applicable to them<sup>10</sup>; (3) proper practices have been observed in their compilation<sup>11</sup>; and (4) the trust has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources<sup>12</sup>. An auditor of an NHS foundation trust has a right of access at all reasonable times to every document relating to the trust which appears to him necessary for the purposes of his functions<sup>13</sup>. The auditor may require a person holding or accountable for any such document to give him such information and explanation as he considers necessary for the purposes of his functions<sup>14</sup> and, if he considers it necessary, require the person to attend before him in person to give the information or explanation or to produce the document<sup>15</sup>. The auditor may also require any director or officer<sup>16</sup> of the trust to give him such information or explanation as he considers necessary for the purposes of his functions<sup>17</sup> and, if he considers it necessary, require the director or officer to attend before him in person to give the information or explanation<sup>18</sup>. The trust must provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions<sup>19</sup>.

In auditing the accounts of an NHS foundation trust, the auditor must consider: (a) whether, in the public interest, he should make a report on any matter coming to his notice in the course of the audit, in order for it to be considered by the trust or brought to the attention of the public<sup>20</sup>; and (b) whether the public interest requires any such matter to be made the subject of an immediate report rather than of a report to be made at the conclusion of the audit<sup>21</sup>. Any such report must be sent by the auditor to the board of governors and board of directors of the trust and to the regulator at once if it is an immediate report<sup>22</sup>, otherwise not later than 14 days after conclusion of the audit<sup>23</sup>. The directors must take the report into consideration as soon as practicable after receiving it<sup>24</sup>.

When an auditor of an NHS foundation trust has concluded his audit of the trust's accounts, he must enter on the accounts a certificate that he has completed the audit in accordance with the statutory provisions<sup>25</sup>, and his opinion on the accounts<sup>26</sup>.

If the auditor of an NHS foundation trust has reason to believe that the trust or a director or officer of the trust: (i) is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful<sup>27</sup>; or (ii) is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency<sup>28</sup>, he must refer the matter at once to the regulator<sup>29</sup>. Where a director or officer of an NHS foundation trust receives money or other property<sup>30</sup> on behalf of the trust<sup>31</sup>, or for which he ought to account to the trust<sup>32</sup>, the accounts of the director or officer must be audited by the auditor of the accounts of the trust<sup>33</sup>.

No information relating to an NHS foundation trust or other person<sup>34</sup> and obtained<sup>35</sup> by an auditor (or by a person acting on the auditor's behalf) may be disclosed except: (A) with the

consent of the person to whom the information relates<sup>36</sup>; (B) for the purposes of any functions of an auditor of an NHS foundation trust<sup>37</sup>; (C) for the purposes of the functions of the regulator<sup>38</sup>; (D) for the purposes of the functions<sup>39</sup> of the Comptroller and Auditor General<sup>40</sup>; (E) for the purposes of the functions<sup>41</sup> of the Commission for Healthcare Audit and Inspection<sup>42</sup>; (F) for the purposes of any criminal proceedings<sup>43</sup>. A person who discloses information in contravention of this provision is guilty of an offence<sup>44</sup>.

1 As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.

2 National Health Service Act 2006 Sch 7 para 23(1). As to the preparation of accounts by a public benefit corporation see PARA 204.

3 As to the board of governors see PARA 177.

4 National Health Service Act 2006 Sch 7 para 23(2). An officer of the Audit Commission may be the auditor if he is appointed by the board with the agreement of the Commission: Sch 7 para 23(3). A person may not be appointed as auditor unless he (or, in the case of a firm, each of its members) is a member of one or more of the bodies mentioned in the Audit Commission Act 1998 s 3(7)(a)-(e) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 758), or any other body of accountants established in the United Kingdom and approved by the regulator for these purposes: National Health Service Act 2006 Sch 7 para 23(4). Where an officer of the Audit Commission is appointed as auditor, the Commission must charge the public benefit corporation such fees for his services as will cover the full cost of providing them: Sch 7 para 23(5). 'Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 744 et seq): Sch 7 para 23(7) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)). As to the meaning of 'United Kingdom' see PARA 15 note 8. As to the meaning of 'regulator' see PARA 188 note 1.

5 As to the board of directors see PARA 180.

6 As to the meaning of 'functions' see PARA 6 note 3.

7 National Health Service Act 2006 Sch 7 para 23(6).

8 The directions given under the National Health Service Act 2006 Sch 7 para 25: see PARA 204.

9 National Health Service Act 2006 s 62, Sch 10 para 1(a).

10 National Health Service Act 2006 Sch 10 para 1(b). As to the meaning of 'enactment' see PARA 10 note 7.

11 National Health Service Act 2006 Sch 10 para 1(c).

12 National Health Service Act 2006 Sch 10 para 1(d). As to the duty to exercise functions effectively, efficiently and economically see PARA 207.

13 National Health Service Act 2006 Sch 10 para 2(1). A person who without reasonable excuse fails to comply with any requirement of an auditor of an NHS foundation trust under any of Sch 10 para 2(1)-(3) is guilty of an offence (Sch 10 para 2(5)) and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (Sch 10 para 2(6)(a)), and to an additional fine not exceeding £20 for each day on which the offence continues after conviction for the offence (Sch 10 para 2(6)(b)). Any expenses incurred by an auditor of an NHS foundation trust in connection with proceedings for such an offence alleged to have been committed in relation to the audit of the accounts of the trust, so far as not recovered from any other source, are recoverable from the trust: Sch 10 para 2(7). As to the standard scale see PARA 28 note 12.

14 National Health Service Act 2006 Sch 10 para 2(2)(a). See also note 13.

15 National Health Service Act 2006 Sch 10 para 2(2)(b). See also note 13.

16 As to the meaning of 'officer' see PARA 28 note 5.

17 National Health Service Act 2006 Sch 10 para 2(3)(a). See also note 13.

18 National Health Service Act 2006 Sch 10 para 2(3)(b). See also note 13.

19 National Health Service Act 2006 Sch 10 para 2(4). This provision does not affect the generality of Sch 10 para 2(1)-(3) (see the text to notes 13-18): Sch 10 para 2(4).

- 20 National Health Service Act 2006 Sch 10 para 3(a).
- 21 National Health Service Act 2006 Sch 10 para 3(b).
- 22 National Health Service Act 2006 Sch 10 para 5(1)(a).
- 23 National Health Service Act 2006 Sch 10 para 5(1)(b).
- 24 National Health Service Act 2006 Sch 10 para 5(2).
- 25 National Health Service Act 2006 Sch 10 para 4(1)(a). The statutory provisions are those of the National Health Service Act 2006 Ch 5 (ss 30-65).
- 26 National Health Service Act 2006 Sch 10 para 4(1)(b). Where the auditor makes a report to the board of governors and board of directors of the trust under Sch 10 para 3 (see the text to notes 20, 21) at the conclusion of the audit, he may instead include the certificate and his opinion in that report: Sch 10 para 4(2).
- 27 National Health Service Act 2006 Sch 10 para 6(a).
- 28 National Health Service Act 2006 Sch 10 para 6(b).
- 29 National Health Service Act 2006 Sch 10 para 6.
- 30 As to the meaning of 'property' see PARA 4 note 9.
- 31 National Health Service Act 2006 Sch 10 para 7(1)(a).
- 32 National Health Service Act 2006 Sch 10 para 7(1)(b).
- 33 National Health Service Act 2006 Sch 10 para 7(1). The accounts of the director or officer must be made up to 31 March: Sch 10 para 7(2). Schedule 7 para 25(5) (see PARA 204) and Sch 10 paras 1-5 (see the text to notes 8-26) apply with the necessary modifications to the audit: Sch 10 para 7(3).
- 34 As to the meaning of 'person' see PARA 17 note 2.
- 35 Ie under the National Health Service Act 2006 Ch 5 (ss 30-65) or in the course of an audit under that Chapter.
- 36 National Health Service Act 2006 Sch 10 para 8(1)(a).
- 37 National Health Service Act 2006 Sch 10 para 8(1)(b).
- 38 National Health Service Act 2006 Sch 10 para 8(1)(c).
- 39 Ie under the National Health Service Act 2006 Ch 5 (ss 30-65).
- 40 National Health Service Act 2006 Sch 10 para 8(1)(d). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.
- 41 Ie under the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 (ss 41-149).
- 42 National Health Service Act 2006 Sch 10 para 8(1)(e). As to the Commission for Healthcare Audit and Inspection see PARA 552 et seq.
- 43 National Health Service Act 2006 Sch 10 para 8(1)(f).
- 44 National Health Service Act 2006 Sch 10 para 8(2). A person guilty of such an offence is liable on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both) (Sch 10 para 8(3)(a)); or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or to both) (Sch 10 para 8(3)(b)). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) (not yet in force) (general limit on magistrates' courts power to impose imprisonment: see **MAGISTRATES**) the reference in the National Health Service Act 2006 Sch 10 para 8(3)(a) to a period of imprisonment of 12 months is a reference to a period of imprisonment of six months: Sch 10 para 8(4). As to the statutory maximum see PARA 48 note 6.

## UPDATE

### **203 Auditor**

NOTE 4--National Health Service Act 2006 Sch 7 para 23(3), (4), (7) substituted: SI 2009/1941.

TEXT AND NOTE 42--For 'the Commission for Healthcare Audit and Inspection' substitute 'the Care Quality Commission': National Health Service Act 2006 Sch 10 para 8(1)(e) (amended by the Health and Social Care Act 2009 Sch 5 para 86).

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## 204. Accounts.

A public benefit corporation<sup>1</sup> must keep accounts in such form as the regulator<sup>2</sup> may with the approval of the Treasury direct<sup>3</sup>. The accounts must be audited by the corporation's auditor<sup>4</sup>; and in auditing the accounts the auditor must comply with any directions given by the regulator as to the standards, procedures and techniques to be adopted<sup>5</sup>. The Comptroller and Auditor General<sup>6</sup> may examine the accounts<sup>7</sup>, any records relating to them<sup>8</sup>, and any report of the auditor on them<sup>9</sup>. If trustees are appointed<sup>10</sup>, the Comptroller and Auditor General may also examine the accounts kept by the trustees<sup>11</sup>, any records relating to them<sup>12</sup>, and any report of an auditor on them<sup>13</sup>.

A public benefit corporation must prepare in respect of each financial year<sup>14</sup> annual accounts in such form as the regulator may with the approval of the Treasury direct<sup>15</sup>. In preparing its annual accounts, the corporation must comply with any directions given by the regulator with the approval of the Treasury as to the methods and principles according to which the accounts must be prepared<sup>16</sup>, and the information to be given in the accounts<sup>17</sup>. The corporation must lay a copy of the annual accounts, and any report of the auditor on them, before Parliament<sup>18</sup>, and once it has done so, send copies of those documents to the regulator<sup>19</sup>.

The constitution<sup>20</sup> must provide for the functions<sup>21</sup> of the corporation under these provisions to be delegated to the accounting officer<sup>22</sup>.

1 As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.

2 As to the meaning of 'regulator' see PARA 188 note 1.

3 National Health Service Act 2006 Sch 7 para 24(1). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 National Health Service Act 2006 Sch 7 para 24(2). As to the auditor and the audit of accounts see PARA 203.

5 National Health Service Act 2006 Sch 7 para 24(5).

6 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

7 National Health Service Act 2006 Sch 7 para 24(3)(a).

8 National Health Service Act 2006 Sch 7 para 24(3)(b).

9 National Health Service Act 2006 Sch 7 para 24(3)(c). As to auditors reports see PARA 203.

10 Ie under the National Health Service Act 2006 s 51: see PARA 186.

11 National Health Service Act 2006 Sch 7 para 24(4)(a).

12 National Health Service Act 2006 Sch 7 para 24(4)(b).

13 National Health Service Act 2006 Sch 7 para 24(4)(c).

14 As to the meaning of 'financial year' see PARA 184 note 10.

15 National Health Service Act 2006 Sch 7 para 25(1). In determining the form and content of the annual accounts the regulator must aim to ensure that the accounts present a true and fair view: Sch 7 para 25(3). The annual accounts, and any report of the auditor on those accounts, must be presented to the board of governors of the corporation at a general meeting: see Sch 7 para 28; and PARA 185.

16 National Health Service Act 2006 Sch 7 para 25(2)(a).

17 National Health Service Act 2006 Sch 7 para 25(2)(b).

18 National Health Service Act 2006 Sch 7 para 25(4)(a). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

19 National Health Service Act 2006 Sch 7 para 25(4)(b).

20 As to the constitution see PARA 174.

21 As to the meaning of 'functions' see PARA 6 note 3.

22 National Health Service Act 2006 Sch 7 para 25(5).



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## ***E. FUNCTIONS***

### **205. Authorised services.**

An authorisation<sup>1</sup> must authorise the NHS foundation trust<sup>2</sup> to provide goods and services<sup>3</sup> for purposes related to the provision of health care<sup>4</sup>; but the authorisation must secure that the principal purpose of the NHS foundation trust is the provision of goods and services for the purposes of the health service in England<sup>5</sup>. The NHS foundation trust may also carry on other activities<sup>6</sup>, subject to any restrictions in the authorisation, for the purpose of making additional income available in order better to carry on its principal purpose<sup>7</sup>. The authorisation must authorise and may require the NHS foundation trust: (1) to carry out research in connection with the provision of health care<sup>8</sup>; (2) to make facilities<sup>9</sup> and staff available for the purposes of education, training or research carried on by others<sup>10</sup>; and, in deciding how to exercise such functions<sup>11</sup> in a case where any of the corporation's hospitals<sup>12</sup> includes a medical<sup>13</sup> or dental school provided by a university<sup>14</sup>, the regulator<sup>15</sup> must have regard to the need to establish and maintain appropriate arrangements within the university<sup>16</sup>.

The authorisation may require the provision, wholly or partly for the purposes of the health service in England, of goods and services by the NHS foundation trust<sup>17</sup>. Such a requirement may be framed by reference (among other things) to: (a) goods or services in general or of a particular description<sup>18</sup>; (b) goods or services required to meet the needs of health service bodies in general or those of a particular description<sup>19</sup>; (c) goods or services required to meet the needs of other persons<sup>20</sup> of a particular description<sup>21</sup>; (d) the volume of goods or services provided<sup>22</sup>; (e) the place where goods or services are provided<sup>23</sup>; (f) the period within which goods or services are provided<sup>24</sup>.

1 As to the meaning of 'authorisation' see PARA 195 note 2. As to the giving of authorisation see PARA 195.

2 As to NHS foundation trusts see PARA 174.

3 As to references to 'goods and services' see PARA 174 note 3.

4 National Health Service Act 2006 s 43(1).

5 National Health Service Act 2006 s 43(2). As to the meaning of 'health service' see PARA 10 note 3. As to the meaning of 'England' see PARA 6 note 2. As to the general duty of NHS foundation trusts in the performance of their functions see PARA 207. The functions of an NHS foundation trust include power to provide any services to which a pilot scheme for the provision of local pharmaceutical services applies (see s 134(6); and PARA 419) and any services to which an LPS scheme applies (see s 144, Sch 12 para 1(6); and PARA 431).

6 Ie other than those mentioned in the National Health Service Act 2006 s 43(1); see the text to notes 1-4.

7 National Health Service Act 2006 s 43(3). As to restrictions in respect of private charges see PARA 206. As to the financial powers of NHS foundation trusts see PARA 202.

8 National Health Service Act 2006 s 43(5)(a).

9 As to the meaning of 'facilities' see PARA 12 note 7.

10 National Health Service Act 2006 s 43(5)(b).

11 As to the meaning of 'functions' see PARA 6 note 3.

12 As to the meaning of 'hospital' see PARA 12 note 4.

13 As to the meaning of 'medical' see PARA 10 note 5.

14 As to the meaning of 'university' see PARA 22 note 4.

15 As to the meaning of 'regulator' see PARA 188 note 1.

16 National Health Service Act 2006 s 43(5).

17 National Health Service Act 2006 s 43(4). In deciding whether or not to require the NHS foundation trust to provide, wholly or partly for the purposes of the health service in England, any goods or services the regulator must have regard (among other things) to: (1) the need for the provision of goods or services in the area in question (s 43(6)(a)); (2) any provision of goods or services by other health service bodies in the area in question (s 43(6)(b)); (3) any other provision by the NHS foundation trust with which the provision of the goods or services is connected (s 43(6)(c)); (4) any agreement or arrangement to which the body corporate which is the NHS foundation trust is or was a party (s 43(6)(d)). As to the meaning of 'health service body' see PARA 195 note 31.

18 National Health Service Act 2006 s 43(7)(a).

19 National Health Service Act 2006 s 43(7)(b).

20 As to the meaning of 'person' see PARA 17 note 2.

21 National Health Service Act 2006 s 43(7)(c).

22 National Health Service Act 2006 s 43(7)(d).

23 National Health Service Act 2006 s 43(7)(e).

24 National Health Service Act 2006 s 43(7)(f).

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## **206. Private health care.**

An authorisation<sup>1</sup> may restrict the provision, for purposes other than those of the health service in England<sup>2</sup>, of goods and services<sup>3</sup> by an NHS foundation trust<sup>4</sup>. The power must be exercised, in particular, with a view to securing that the proportion of the total income of an NHS foundation trust which was an NHS trust<sup>5</sup> in any financial year<sup>6</sup> derived from private charges<sup>7</sup> is not greater than the proportion of the total income of the NHS trust derived from such charges in the base financial year<sup>8</sup>.

According to the nature of its functions<sup>9</sup>, an NHS foundation trust may, in the case of patients being provided with goods and services for the purposes of the health service, make accommodation or further services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS foundation trust in respect of the accommodation or services<sup>10</sup>. An NHS foundation trust may exercise this power only to the extent that its exercise does not to any significant extent interfere with the performance by the NHS foundation trust of its functions<sup>11</sup>.

1 As to the meaning of 'authorisation' see PARA 195 note 2. As to the giving of authorisation see PARA 195.

2 As to the meaning of 'health service' see PARA 10 note 3. As to the meaning of 'England' see PARA 6 note 2.

3 As to references to 'goods and services' see PARA 174 note 3.

4 National Health Service Act 2006 s 44(1). Section 43(7) (see PARA 205) applies for the purposes of s 44: s 44(5). As to NHS foundation trusts see PARA 174.

5 As to NHS trusts see PARA 155. As to applications by NHS trusts to become NHS foundation trusts see PARA 193.

6 As to the meaning of 'financial year' see PARA 132 note 1.

7 'Private charges' means charges imposed in respect of goods and services provided to patients other than patients being provided with goods and services for the purposes of the health service: National Health Service Act 2006 s 44(4). As to the meaning of 'patient' see PARA 15 note 6.

8 National Health Service Act 2006 s 44(2). 'Base financial year' means the first financial year throughout which the body corporate was an NHS trust or, if it was an NHS trust throughout the financial year ending with 31 March 2003, that year: s 44(3).

9 As to the meaning of 'functions' see PARA 6 note 3. As to the functions of NHS foundation trusts see PARA 205.

10 National Health Service Act 2006 s 44(6). As to the recovery of charges see PARA 482.

11 National Health Service Act 2006 s 44(7).

## **UPDATE**

### **206 Private health care**

NOTES 4-6--See *R (on the application of Unison) v Monitor* [2009] EWHC 3221 (Admin), [2009] All ER (D) 85 (Dec) (no basis for limiting statutory cap so that it only applied to

income derived from provision of NHS foundation trust services, staff or facilities to a separate entity over which trust had control).

TEXT AND NOTE 8--After 'base financial year' read ' or, in the case of a mental health foundation trust designated under the National Health Service Act 2006 s 44(2A), the proportion or 1.5 per cent if greater': s 44(2) (amended by the Health Act 2009 s 33(2)). An authorisation of an NHS foundation trust which was an NHS trust must designate it as a mental health foundation trust for the purposes of this section if it appears to the regulator that it provides goods or services only or mainly for the prevention, diagnosis or treatment of any disorder or disability of the mind or for the benefit in any other way of people suffering from a disorder or disability of the mind: National Health Service Act 2006 s 44(2) (added by the Health Act 2009 s 33(3)).

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## 207. General duty and powers.

An NHS foundation trust<sup>1</sup> must exercise its functions<sup>2</sup> effectively, efficiently and economically<sup>3</sup>. An NHS foundation trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with its functions<sup>4</sup>. In particular it may: (1) acquire and dispose of property<sup>5</sup>; (2) enter into contracts<sup>6</sup>; (3) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust<sup>7</sup> or for any purposes relating to the health service)<sup>8</sup>; (4) employ staff<sup>9</sup>. Any power of the NHS foundation trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay)<sup>10</sup>.

1 As to NHS foundation trusts see PARA 174.

2 As to the meaning of 'functions' see PARA 6 note 3. As to the functions of NHS foundation trusts see PARA 205.

3 National Health Service Act 2006 s 63.

4 National Health Service Act 2006 s 47(1).

5 National Health Service Act 2006 s 47(2)(a). As to the meaning of 'property' see PARA 4 note 9.

6 National Health Service Act 2006 s 47(2)(b).

7 'The purposes of the NHS foundation trust' means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust): National Health Service Act 2006 s 47(4). As to the meaning of 'hospital' see PARA 12 note 4.

8 National Health Service Act 2006 s 47(2)(c). As to the meaning of 'health service' see PARA 10 note 3.

9 National Health Service Act 2006 s 47(2)(d).

10 National Health Service Act 2006 s 47(3).

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## **208. Protection of property.**

An NHS foundation trust<sup>1</sup> may not dispose<sup>2</sup> of any protected property without the approval of the regulator<sup>3</sup>. The regulator may give approval on any terms it considers appropriate<sup>4</sup>.

'Protected property' is property of the trust designated as protected in its authorisation<sup>5</sup>. The regulator may designate property as protected if it considers it is needed: (1) for the purposes of any goods or services<sup>6</sup> which the authorisation requires the trust to provide wholly or partly for the purposes of the health service in England<sup>7</sup>; or (2) for the purpose of doing anything which the trust is required<sup>8</sup> to do in connection with research, education or training<sup>9</sup>.

An NHS foundation trust may not create a floating charge on its property<sup>10</sup>.

1 As to NHS foundation trusts see PARA 174.

2 Disposing of property includes disposing of part of it or granting an interest in it: National Health Service Act 2006 s 45(2). As to the meaning of 'property' see PARA 4 note 9.

3 National Health Service Act 2006 s 45(1). As to the meaning of 'regulator' see PARA 188 note 1.

4 National Health Service Act 2006 s 45(5).

5 National Health Service Act 2006 s 45(3). As to the meaning of 'authorisation' see PARA 195 note 2. As to the giving of authorisation see PARA 195.

6 As to references to 'goods and services' see PARA 174 note 3.

7 National Health Service Act 2006 s 45(4)(a). As to the meaning of 'health service' see PARA 10 note 3. As to the meaning of 'England' see PARA 6 note 2. As to the authorisation of the provision of goods and services see PARA 205.

8 Ie under the National Health Service Act 2006 s 43(5): see PARA 205.

9 National Health Service Act 2006 s 45(4)(b).

10 National Health Service Act 2006 s 45(6). As to floating charges see **COMPANIES** vol 15 (2009) PARA 1269 et seq.

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## ***F. FAILURE***

### **209. Failing NHS foundation trusts.**

If the regulator<sup>1</sup> is satisfied: (1) that an NHS foundation trust<sup>2</sup> is contravening, or failing to comply with, any term of its authorisation<sup>3</sup> or any requirement imposed on it under any enactment<sup>4</sup> and that the contravention or failure is significant<sup>5</sup>; or (2) that an NHS foundation trust has contravened, or failed to comply with, any such term or requirement and is likely to do so again and that the contravention or failure was significant<sup>6</sup>, the regulator may by a notice to the trust exercise one or more of the following powers<sup>7</sup>. The powers are that the regulator may: (a) require the trust, the directors<sup>8</sup> or the board of governors<sup>9</sup> to do, or not to do, specified things or things of a specified description within a specified period<sup>10</sup>; and (b) remove any or all of the directors or members of the board of governors and appoint interim directors or members of the board<sup>11</sup>. The regulator may also by a notice to the trust exercise one or more of those powers if the regulator is satisfied that the trust has contravened or failed to comply with a previous notice<sup>12</sup>.

1 As to the meaning of 'regulator' see PARA 188 note 1.

2 As to NHS foundation trusts see PARA 174.

3 As to the meaning of 'authorisation' see PARA 195 note 2. As to the giving of authorisation see PARA 195.

4 As to the meaning of 'enactment' see PARA 10 note 7.

5 National Health Service Act 2006 s 52(1)(a).

6 National Health Service Act 2006 s 52(1)(b).

7 National Health Service Act 2006 s 52(1). A copy of any such notice must be made available for inspection by members of the public: see Sch 7 para 22(1); and PARA 183. As to the powers of the regulator where a trust fails to comply with a notice see s 54; and PARA 211.

8 As to the board of directors see PARA 180.

9 As to the board of governors see PARA 177.

10 National Health Service Act 2006 s 52(3).

11 National Health Service Act 2006 s 52(4). The regulator's power to remove a director, or member of the board of governors, of the trust includes power to suspend him from office, or to disqualify him from holding office, as a director or member of the board of governors of the trust for a specified period: s 52(5).

12 National Health Service Act 2006 s 52(2).

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## **210. Voluntary arrangements.**

If the regulator<sup>1</sup> is satisfied that it is necessary or expedient to do so, it may by a notice<sup>2</sup> to an NHS foundation trust<sup>3</sup> require the directors<sup>4</sup> to take steps to obtain a moratorium<sup>5</sup>, or to make a proposal for a voluntary arrangement<sup>6</sup>.

1 As to the meaning of 'regulator' see PARA 188 note 1.

2 As to the powers of the regulator where a trust fails to comply with a notice see the National Health Service Act 2006 s 54; and PARA 211.

3 An order may provide for the Insolvency Act 1986 Pt 1 (ss 1-7B) (company voluntary arrangements: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 71 et seq), including any related provision of that Act, to apply with modifications in relation to NHS foundation trusts: National Health Service Act 2006 s 53(2). An order means an order made by the Secretary of State: s 55(1). The modifications of the Insolvency Act 1986 that may be made by an order include: (1) provision for securing that the goods and services which the trust is required by the authorisation to provide continue to be provided (whether by the trust or another) (National Health Service Act 2006 s 55(2)(a)); (2) provision for securing the protection of property needed for the purposes of those goods and services (s 55(2)(b)). As to NHS foundation trusts see PARA 174. As to the Secretary of State see PARA 6 note 8. As to orders see PARA 187. As to references to 'goods and services' see PARA 174 note 3. As to the authorisation of the provision of goods and services see PARA 205. As to the meaning of 'property' see PARA 4 note 9. At the date at which this volume states the law no such order had been made.

4 As to the board of directors see PARA 180.

5 National Health Service Act 2006 s 53(1)(a). A 'moratorium' is a moratorium under the Insolvency Act 1986 s 1A (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 73) as modified by the order: see the National Health Service Act 2006 s 53(3).

6 National Health Service Act 2006 s 53(1)(b). A 'voluntary arrangement' is a voluntary arrangement under the Insolvency Act 1986 Pt 1 (ss 1-7B) as modified by the order: see the National Health Service Act 2006 s 53(4).

## **UPDATE**

### **210 Voluntary arrangements**

NOTE 3--The National Health Service Act 2006 s 53 applies to an NHS foundation trust to which Ch 5A (ss 65A-65O) (see PARA 79A) does not apply: s 53(4A) (added by the Health Act 2009 s 18(5)). National Health Service Act 2006 s 53(1), (2) amended: Health Act 2009 s 18(3), (4).



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## 211. Dissolution.

Where:

128 (1) an NHS foundation trust<sup>1</sup> contravenes or fails to comply with a notice given by the regulator<sup>2</sup>, or the trust's compliance with a notice<sup>3</sup> does not result in the implementation of a voluntary arrangement<sup>4</sup>; and

129 (2) the regulator considers that further exercise of any of the powers relating to such notices<sup>5</sup> would not be likely to secure the provision of the goods and services<sup>6</sup> which the authorisation<sup>7</sup> requires the trust to provide<sup>8</sup>,

an order<sup>9</sup> may transfer, or provide for the transfer of<sup>10</sup>, any property or liabilities<sup>11</sup> of the trust to another NHS foundation trust<sup>12</sup>, a primary care trust<sup>13</sup>, an NHS trust<sup>14</sup>, or the Secretary of State<sup>15</sup>. An order may provide for the dissolution of the trust<sup>16</sup>. Before these powers are exercised, the regulator must consult specified persons about specified matters<sup>17</sup>.

Where the regulator refuses to give an authorisation to a public benefit corporation<sup>18</sup> the powers set out above are also exercisable<sup>19</sup>.

1 As to NHS foundation trusts see PARA 174.

2 Ie a notice under the National Health Service Act 2006 s 52 (see PARA 209) or s 53 (see PARA 210). As to the meaning of 'regulator' see PARA 188 note 1.

3 Ie a notice under the National Health Service Act 2006 s 53: see PARA 210.

4 National Health Service Act 2006 s 54(1)(a). As to the meaning of 'voluntary arrangement' see PARA 210 note 6.

5 Ie the powers conferred by the National Health Service Act 2006 s 52 (see PARA 209) or s 53 (see PARA 210).

6 As to references to 'goods and services' see PARA 174 note 3.

7 As to the meaning of 'authorisation' see PARA 195 note 2. As to the authorisation of the provision of goods and services see PARA 205.

8 National Health Service Act 2006 s 54(1)(b).

9 Ie an order made by the Secretary of State: see the National Health Service Act 2006 s 55(1). The power conferred by s 54(4) must be exercised with a view to securing the provision of the goods and services which the authorisation requires the trust to provide (s 55(3)); and must also be exercised (together, if required, with the power conferred by s 40(2) (see PARA 199)) with a view to securing that any transfer of property in pursuance of the exercise of the power does not result in a net loss of value to the trust; and the question whether a transfer would result in a net loss of value must be determined in accordance with regulations (s 55(4)). As to the Secretary of State see PARA 6 note 8. As to the meaning of 'property' see PARA 4 note 9. As to orders and regulations see PARA 187. Orders relating to individual trusts are not recorded in this work.

An order may apply any provision of the Insolvency Act 1986 Pt 4 (ss 73-219) (winding up of companies: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 433 et seq), including any related provision of that Act, with modifications: National Health Service Act 2006 s 54(8). The modifications of the Insolvency Act 1986 that may be made by an order include: (1) provision for securing that the goods and services which the trust is required by the authorisation to provide continue to be provided (whether by the trust or another) (National Health Service Act 2006 s 55(2)(a)); (2) provision for securing the protection of property needed for the purposes of those goods and services (s 55(2)(b)). The Insolvency Act 1986 may not be modified under the

National Health Service Act 2006 s 54(8) so as to alter the priority of debts or the ranking of debts between themselves: s 55(5).

10 An order may provide for the transfer of employees of an NHS foundation trust to a person mentioned in the National Health Service Act 2006 s 54(4): s 54(6), Sch 9 para 1. As to the transfer of such employees see Sch 9 paras 2-6. As to the meaning of 'person' see PARA 17 note 2.

11 The liabilities which may be transferred to any of the bodies mentioned in the National Health Service Act 2006 s 54(4)(a)-(c) (see the text to notes 12-14) include criminal liabilities: s 54(5). In the absence of a specific reference in the legislation, criminal liabilities are not transferred (see *R v Pennine Acute Hospitals NHS Trust (formerly Rochdale Healthcare NHS Trust)* [2003] EWCA Crim 3436, [2004] 1 All ER 1324); thus criminal liabilities may not be transferred to the Secretary of State.

12 National Health Service Act 2006 s 54(4)(a).

13 National Health Service Act 2006 s 54(4)(b). As to primary care trusts see PARA 111.

14 National Health Service Act 2006 s 54(4)(c). As to NHS trusts see PARA 155.

15 National Health Service Act 2006 s 54(4)(d).

16 National Health Service Act 2006 s 54(7).

17 National Health Service Act 2006 s 54(2). 'Specified' means specified in an order made by the Secretary of State: see ss 54(3), 55(1). At the date at which this volume states the law no such order had been made. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

18 As to the meaning of 'public benefit corporation' see PARA 174 note 1.

19 National Health Service Act 2006 s 54(9)(a). In such a case references in s 54 and Sch 9 to an NHS foundation trust are references to the corporation: s 54(9)(b).

## **UPDATE**

### **211 Dissolution**

NOTES 1, 10--References to NHS foundation trusts are to NHS foundation trusts to which the National Health Service Act 2006 s 53 applies (see PARA 210): s 54(1), Sch 9 para 1 (amended by the Health Act 2009 s 18(6), (11)).

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## **G. MERGERS**

### **212. Application for merger.**

An application may be made jointly by an NHS foundation trust<sup>1</sup>, and another NHS foundation trust or an NHS trust<sup>2</sup>, to the regulator<sup>3</sup> for authorisation of the dissolution of the trusts and the transfer of some or all of their property<sup>4</sup> and liabilities<sup>5</sup> to a new NHS foundation trust<sup>6</sup>. The application must: (1) be supported by the Secretary of State if one of the parties to it is an NHS trust<sup>7</sup>; (2) specify the property and liabilities proposed to be transferred to the new NHS foundation trust<sup>8</sup>; (3) describe the goods and services<sup>9</sup> which it is proposed should be provided by the new trust<sup>10</sup>; (4) be accompanied by a copy of the proposed constitution of the new trust<sup>11</sup>; and (5) give any further information which the regulator requires the applicants to give<sup>12</sup>. The applicants must consult about the application in accordance with regulations<sup>13</sup>. The applicants may modify the application with the agreement of the regulator at any time before authorisation is given<sup>14</sup>.

The regulator may issue a certificate incorporating the directors of the applicants as a public benefit corporation<sup>15</sup>, and give an authorisation to the corporation to become an NHS foundation trust<sup>16</sup>, if it is satisfied as to the following matters<sup>17</sup>. The matters are that: (a) the constitution of the new trust will be in accordance with the statutory provisions<sup>18</sup> and will otherwise be appropriate<sup>19</sup>; (b) the applicants have taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership<sup>20</sup>; (c) the new trust will be able to provide the goods and services which the authorisation will require it to provide<sup>21</sup>; and (d) any other requirements which the regulator considers appropriate are met<sup>22</sup>. On an authorisation being given, the proposed constitution of the NHS foundation trust has effect, but the directors of the applicants may exercise the functions<sup>23</sup> of the trust on its behalf until a board of directors<sup>24</sup> is appointed in accordance with the constitution<sup>25</sup>.

1 National Health Service Act 2006 s 56(1)(a). As to NHS foundation trusts see PARA 174.

2 National Health Service Act 2006 s 56(1)(b). Where one of the parties to an application is an NHS trust, the powers conferred on the Secretary of State by s 25(4), Sch 4 Pt 3 (paras 28-31) (see PARA 167) are not exercisable in relation to the trust: s 57(5). As to NHS trusts see PARA 155. As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply in the case of the National Health Service Act 2006 ss 56, 57: see PARA 6.

3 As to the meaning of 'regulator' see PARA 188 note 1.

4 As to the meaning of 'property' see PARA 4 note 9.

5 In the National Health Service Act 2006 s 56(1) and (2) (see the text to note 8), and s 57(1) and (2) (see note 16), 'liabilities' includes criminal liabilities; and an order under s 57(3) (see note 16) may transfer any remaining criminal liabilities to any of the bodies mentioned in s 54(4)(a)-(c) (see PARA 211): s 57(4).

6 National Health Service Act 2006 s 56(1).

7 National Health Service Act 2006 s 56(2)(a).

8 National Health Service Act 2006 s 56(2)(b). See also note 5.

9 As to references to 'goods and services' see PARA 174 note 3.

- 10 National Health Service Act 2006 s 56(2)(c).
- 11 National Health Service Act 2006 s 56(2)(d).
- 12 National Health Service Act 2006 s 56(2).
- 13 National Health Service Act 2006 s 56(7). In the course of the consultation the applicants must seek the views of: (1) the staff employed by the applicants (s 56(8)(b)); (2) individuals who live in any area specified in the proposed constitution as the area for a public constituency (s 56(8)(c)); (3) any local authority that would be authorised by the proposed constitution to appoint a member of the board of governors (s 56(8)(d)); (4) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency (s 56(8)(e)); (5) any prescribed persons (s 56(8)(f)). The regulator may not give an authorisation unless it is satisfied that the applicants have complied with the regulations: s 56(9). As to the meanings of 'public constituency' and 'patients' constituency' see PARA 175. As to the meaning of 'local authority' see PARA 17 note 3. As to the board of governors see PARA 177. As to the meaning of 'person' see PARA 17 note 2. 'Prescribed' means prescribed by regulations: see s 275(1). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 187. At the date at which this volume states the law no such regulations had been made.
- 14 National Health Service Act 2006 s 56(3).
- 15 National Health Service Act 2006 s 56(4)(a). As to the meaning of 'public benefit corporation' see PARA 174 note 1. As to NHS foundation trusts as public benefit corporations see PARA 174.
- 16 National Health Service Act 2006 s 56(4)(b). Where an authorisation is given, the regulator must specify the property and liabilities to be transferred to the new NHS foundation trust: s 57(1). Where an authorisation is given, the Secretary of State must make an order dissolving the trusts in question (s 57(2)(a)), and transferring, or providing for the transfer of, the property and liabilities specified by the regulator to the new NHS foundation trust (s 57(2)(b)). The order may transfer, or provide for the transfer of, any of the remaining property or liabilities to the persons mentioned in s 54(3) (see PARA 211) (s 57(3)(a)), and include provisions corresponding to those of Sch 9 (see PARA 211) (s 57(3)(b)). Section 35(4) (see PARA 195) applies to an authorisation under s 56 as it does in relation to an authorisation under that section: s 57(6). See also note 5. As to orders see PARA 187. Orders in respect of individual trusts are not recorded in this work.
- 17 National Health Service Act 2006 s 56(4). The certificate is conclusive evidence of incorporation; and the authorisation is conclusive evidence that the corporation is an NHS foundation trust: s 56(10). As to conclusive evidence see **CIVIL PROCEDURE** vol 11 (2009) PARA 767.
- 18 In accordance with the National Health Service Act 2006 Sch 7: see PARAS 174-177, 180-185, 203, 204.
- 19 National Health Service Act 2006 s 56(5)(a).
- 20 National Health Service Act 2006 s 56(5)(b).
- 21 National Health Service Act 2006 s 56(5)(c). In deciding whether it is satisfied as to the matters referred to in s 56(5)(c), the regulator must consider (among other things) any report or recommendation in respect of either of the applicants made by the Commission for Healthcare Audit and Inspection (s 56(8)(a)), and the financial position of the applicants (s 56(8)(b)). As to the Commission for Healthcare Audit and Inspection see PARA 552 et seq.
- 22 National Health Service Act 2006 s 56(5)(d).
- 23 As to the meaning of 'functions' see PARA 6 note 3. As to the functions of NHS foundation trusts see PARA 205.
- 24 As to the board of directors see PARA 180.
- 25 National Health Service Act 2006 s 56(11).

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## **(vii) Health Protection Agency**

### **A. ESTABLISHMENT**

#### **213. Establishment and status.**

A body corporate known as the Health Protection Agency is established<sup>1</sup>. The Agency is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>2</sup>; and the property of the Agency is not to be regarded as property of or property held on behalf of the Crown<sup>3</sup>.

In so far as any health care<sup>4</sup> is provided by or for the Agency it is to be treated for the purposes of the standards provisions<sup>5</sup> as an English NHS body<sup>6</sup>.

1 See the Health Protection Agency Act 2004 s 1(1). In Welsh the Agency is known as Yr Asiantaeth Diogelu Iechyd: see s 1(1). As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**. The Agency replaced the special health authority known as the Health Protection Agency established by the Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) (Establishment) Order 2003, SI 2003/505 (revoked), and the National Radiological Protection Board established under the Radiological Protection Act 1970 (repealed). As to the transfer of the property, rights and liabilities of those bodies to the Agency see the Health Protection Agency Act 2004 s 8, Sch 2. The Agency is subject to investigation by the Parliamentary Commissioner: see the Parliamentary Commissioner Act 1967 s 4, Sch 2 (substituted by SI 2005/3430); and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq. The Agency is a public authority for the purposes of the Freedom of Information Act 2000: see s 3, Sch 1 Pt IV (amended by the Health Protection Agency Act 2004 s 11(1), Sch 3 para 15); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

2 Health Protection Agency Act 2004 Sch 1 para 5(1). As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

3 Health Protection Agency Act 2004 Sch 1 para 5(2).

4 'Health care' must be construed in accordance with the Health and Social Care (Community Health and Standards) Act 2003 s 45 (see PARA 548): Health Protection Agency Act 2004 s 10(2).

5 The 'standards provisions' are those in the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 2 (ss 45-47C), Ch 3 (ss 48-69A) and Ch 10 (ss 120-149) (see PARA 548 et seq): Health Protection Agency Act 2004 s 10(3).

6 Health Protection Agency Act 2004 s 10(1). The references in the Health and Social Care (Community Health and Standards) Act 2003 s 53 (failings of bodies: see PARA 568) to special measures are, in relation to the Agency, references to anything that may be done by the appropriate authority in pursuance of the Health Protection Agency Act 2004 s 4 (see PARA 226): s 10(4). The Health and Social Care (Community Health and Standards) Act 2003 s 57 (studies as to economy and efficiency, etc: see PARA 573) does not apply to the Agency: Health Protection Agency Act 2004 s 10(5).

### **UPDATE**

#### **213 Establishment and status**

NOTE 1--Health Protection Agency Act 2004 s 8 amended: Health and Social Care Act 2008 s 159(5).

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## 214. Membership.

The membership of the Health Protection Agency<sup>1</sup> is the chairman<sup>2</sup>, the chief executive<sup>3</sup>, the prescribed number<sup>4</sup> of non-executive members<sup>5</sup>, and the prescribed number of executive members<sup>6</sup>. The chairman is appointed by the Secretary of State after consultation with each of the devolved authorities<sup>7</sup>. One of the non-executive members is appointed by each of the Scottish Ministers<sup>8</sup>, the Department of Health, Social Services and Public Safety in Northern Ireland<sup>9</sup>, and the Welsh Ministers<sup>10</sup>, and the remainder are appointed by the Secretary of State<sup>11</sup>. The executive members are appointed by the chairman and the non-executive members of the Agency<sup>12</sup>. The members of the Agency may appoint one of the non-executive members to be deputy chairman for such period (not exceeding the remainder of his period of office as member) as they specify on making the appointment<sup>13</sup>.

1 As to the Health Protection Agency see PARA 213. As to the tenure of office and disqualification for appointment of members see PARAS 216, 217. As to remuneration and allowances see PARA 218.

2 Health Protection Agency Act 2004 Sch 1 para 1(1)(a). The chairman and non-executive members of the Health Protection Agency are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III (amended by the Health Protection Agency Act 2004 s 11(1), Sch 3 para 6); and **PARLIAMENT** vol 78 (2010) PARA 905. Such persons are also disqualified for membership of the Northern Ireland Assembly: see the Northern Ireland Assembly Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III (amended by the Health Protection Agency Act 2004 Sch 3 para 7). As to the Northern Ireland Assembly see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

3 Health Protection Agency Act 2004 Sch 1 para 1(1)(b). As to the appointment of the chief executive see PARA 219.

4 The prescribed number is such number as the Secretary of State prescribes by regulations (Health Protection Agency Act 2004 Sch 1 para 1(6)); but the Secretary of State must not act under Sch 1 para 1(6) unless he first consults each of the devolved authorities (Sch 1 para 1(7)). Regulations made under Schedule 1 must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see Sch 1 para 29(1). Regulations may make different provision for different purposes: Sch 1 para 29(2). The Health Protection Agency Regulations 2005, SI 2005/408, have been made: see notes 5, 6. As to the Secretary of State see PARA 6 note 8. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

Each of the following is a 'devolved authority': the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland, and the Welsh Ministers: Health Protection Agency Act 2004 Sch 1 para 30; Government of Wales Act 2006 Sch 11 para 32. As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

5 Health Protection Agency Act 2004 Sch 1 para 1(1)(c). The prescribed number of non-executive members, excluding the chairman, is not less than five and not more than 20: Health Protection Agency Regulations 2005, SI 2005/408, reg 2(1)(a). See also note 2.

6 Health Protection Agency Act 2004 Sch 1 para 1(1)(d). The prescribed number of executive members, excluding the chief executive, is not less than one and not more than four: Health Protection Agency Regulations 2005, SI 2005/408, reg 2(1)(b).

7 Health Protection Agency Act 2004 Sch 1 para 1(2). The Secretary of State may by regulations prescribe conditions which are to be satisfied in relation to a person before he is appointed as chairman or as a non-executive member (Sch 1 para 3(1)); but the Secretary of State must not act under this provision unless he first consults each of the devolved authorities (Sch 1 para 3(2)). See also note 4. At the date at which this volume states the law no such regulations had been made. As to the delegation to the Appointments Commission of the powers of the Secretary of State to appoint the chairman and non-executive members of the Agency see the Health Act 2006 s 58(3), Sch 5; and PARA 820.

- 8 See the Health Protection Agency Act 2004 Sch 1 para 1(3)(a).
- 9 See the Health Protection Agency Act 2004 Sch 1 para 1(3)(b).
- 10 See the Health Protection Agency Act 2004 Sch 1 para 1(3)(c); and the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.
- 11 See the Health Protection Agency Act 2004 Sch 1 para 1(3)(d). See also note 7.
- 12 Health Protection Agency Act 2004 Sch 1 para 1(4). The executive members (including the chief executive) are to be employees of the Agency, or persons seconded to the staff of the Agency: Sch 1 para 4. As to staff see PARA 219.
- 13 Health Protection Agency Act 2004 Sch 1 para 1(5).

## **UPDATE**

### **214 Membership**

NOTE 2--Northern Ireland Assembly Disqualification Act 1975 Sch 1 Pt III amended: SI 2009/1941.

TEXT AND NOTES 4, 8-11, 13--Health Protection Agency Act 2004 Sch 1 paras 1(3A), (5A), 29(3) added: Health Act 2009 Sch 3 paras 4-6.

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## **215. Regulations as to appointment.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision as to the terms on which the chairman and non-executive members of the Agency are to be appointed<sup>3</sup>. The regulations may in particular make provision as to the period for which they are to hold office<sup>4</sup>, their eligibility for re-appointment<sup>5</sup>, remuneration and allowances<sup>6</sup>, and circumstances in which their membership is to be suspended or terminated<sup>7</sup>. The Secretary of State may by regulations also make provision as to the circumstances in which a person is disqualified for being the chairman or a non-executive member of the Agency<sup>8</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 Regulations made under the Health Protection Agency Act 2004 Sch 1 must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: see Sch 1 para 29(1). Regulations may make different provision for different purposes: Sch 1 para 29(2). The Health Protection Agency Regulations 2005, SI 2005/408, have been made under the Health Protection Agency Act 2004 Sch 1 paras 8, 10: see PARAS 216-218. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

3 Health Protection Agency Act 2004 Sch 1 para 8(1). As to membership of the Agency see PARA 214.

4 Health Protection Agency Act 2004 Sch 1 para 8(2)(a).

5 Health Protection Agency Act 2004 Sch 1 para 8(2)(b).

6 Health Protection Agency Act 2004 Sch 1 para 8(2)(c).

7 Health Protection Agency Act 2004 Sch 1 para 8(2)(d).

8 Health Protection Agency Act 2004 Sch 1 para 10(1). The Secretary of State must not act under this provision unless he first consults each of the devolved authorities: Sch 1 para 10(2). As to the meaning of 'devolved authority' see PARA 214 note 4. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

## **UPDATE**

### **215 Regulations as to appointment**

NOTE 2--Health Protection Agency Act 2004 Sch 1 para 29(3) added: Health Act 2009 Sch 3 para 6.



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## **216. Tenure of office.**

The term of office of the chairman and non-executive members of the Health Protection Agency<sup>1</sup> is such period, not exceeding five years, as is specified when the appointment is made by the Secretary of State<sup>2</sup> or, as the case may be, a devolved authority<sup>3</sup>. Subject to the provisions relating to disqualification for appointment<sup>4</sup>, the chairman and any non-executive member are, on the termination of that office, eligible for re-appointment<sup>5</sup>.

The chairman or a non-executive member may resign from that office at any time during the term of that office by giving notice in writing<sup>6</sup> to the Secretary of State<sup>7</sup>. Where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Agency or of the health service<sup>8</sup> that the chairman or a non-executive member should continue to hold office, the Secretary of State may immediately terminate that person's tenure of office by giving that person notice in writing to that effect<sup>9</sup>. If the chairman or a non-executive member fails to attend any meeting of the Agency for a period of three months<sup>10</sup> the Secretary of State must immediately terminate that person's tenure of office unless satisfied that the absence was due to a reasonable cause<sup>11</sup> and the person in question will be able to attend meetings of the Agency within such a period as the Secretary of State considers reasonable<sup>12</sup>. Where a person has been appointed to be the chairman or a non-executive member, and: (1) he becomes disqualified for appointment<sup>13</sup>, he must notify the Secretary of State in writing of such disqualification<sup>14</sup>; or (2) it comes to the notice of the Secretary of State that at the time of his appointment or later he was so disqualified, the Secretary of State must immediately declare that the person in question was not duly appointed and notify him in writing to that effect<sup>15</sup>; and his tenure of office, if any, is terminated and he must cease to act as chairman or non-executive member<sup>16</sup>.

1 As to the Health Protection Agency see PARA 213. As to membership of the Agency see PARA 214.

2 As to the Secretary of State see PARA 6 note 8.

3 Health Protection Agency Regulations 2005, SI 2005/408, reg 2(2). This provision is expressed to be subject to reg 6: see the text to notes 6-16. Regulation 4 (cessation of disqualification: see PARA 217) and reg 6 (termination of tenure of office of chairman and non-executive members) apply to a non-executive member appointed by a devolved authority as if each reference to the Secretary of State were a reference to the relevant devolved authority: reg 2(4). As to the meaning of 'devolved authority' see PARA 214 note 4.

4 Ie subject to the Health Protection Agency Regulations 2005, SI 2005/408, reg 3: see PARA 217.

5 Health Protection Agency Regulations 2005, SI 2005/408, reg 2(3).

6 As to the meaning of 'writing' see PARA 7 note 2.

7 Health Protection Agency Regulations 2005, SI 2005/408, reg 6(1).

8 'Health service' is not defined in the Health Protection Agency Act 2004 or the Health Protection Agency Regulations 2005, SI 2005/408. As to the definition in the National Health Service Act 2006 see PARA 10 note 3.

9 Health Protection Agency Regulations 2005, SI 2005/408, reg 6(2).

10 As to the meaning of 'month' see PARA 28 note 16.

11 Health Protection Agency Regulations 2005, SI 2005/408, reg 6(3)(a).

- 12 Health Protection Agency Regulations 2005, SI 2005/408, reg 6(3)(b).
- 13 le under the Health Protection Agency Regulations 2005, SI 2005/408, reg 3: see PARA 217.
- 14 Health Protection Agency Regulations 2005, SI 2005/408, reg 6(4)(a).
- 15 Health Protection Agency Regulations 2005, SI 2005/408, reg 6(4)(b).
- 16 Health Protection Agency Regulations 2005, SI 2005/408, reg 6(4).

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## **217. Disqualification for appointment.**

A person is disqualified for appointment as the chairman or as a non-executive member of the Health Protection Agency<sup>1</sup> if:

- 130 (1) he has, within the preceding five years, been convicted in the United Kingdom<sup>2</sup> of any offence or convicted elsewhere of an offence which, if committed in any part of the United Kingdom, would constitute a criminal offence in that part, and in either case has been sentenced to a period of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine, and which has not been quashed on appeal<sup>3</sup>;
- 131 (2) he is the subject of a bankruptcy restrictions order or interim bankruptcy restrictions order or has had a sequestration of his estate awarded<sup>4</sup>;
- 132 (3) he has been dismissed, otherwise than by reason of redundancy, from any paid employment<sup>5</sup> with a health service body<sup>6</sup>, or the National Radiological Protection Board<sup>7</sup>;
- 133 (4) he is a person whose tenure of office as a chairman or as a member or director of a health service body or the National Radiological Protection Board and in the case of an NHS foundation trust as a governor of a trust, has been terminated on the grounds that: (a) it was not in the interests of, or conducive to the good management of, the health service body, the National Radiological Protection Board, or the health service<sup>8</sup> that he should continue to hold that office<sup>9</sup>; (b) he failed, without reasonable cause, to attend any meeting of that health service body or, as the case may be, the National Radiological Protection Board, for a period of three months or more<sup>10</sup>; or (c) he failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which he had a pecuniary interest<sup>11</sup>;
- 134 (5) he: (a) is the subject of a national disqualification imposed by the Family Health Services Appeal Authority<sup>12</sup>; (b) was refused nomination or approval to fill a vacancy for a medical practitioner<sup>13</sup> and was not subsequently nominated, approved or included in a primary care list<sup>14</sup>; (c) has been refused admission to a primary care list<sup>15</sup> and has not subsequently been included in a primary care list<sup>16</sup>; (d) is conditionally included in a primary care list<sup>17</sup>; (e) has been removed from a primary care list<sup>18</sup> and has not subsequently been included in such a list<sup>19</sup>; (f) is contingently removed from a primary care list<sup>20</sup>; or (g) is<sup>21</sup> suspended from a primary care list or is treated as so suspended<sup>22</sup>;
- 135 (6) he is subject to a disqualification order or disqualification undertaking<sup>23</sup>, or to an order<sup>24</sup> in respect of failure to pay under county court administration order<sup>25</sup>;
- 136 (7) he has been: (a) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he, by his conduct, contributed to or facilitated<sup>26</sup>; or (b) in Scotland, removed under the powers of Court of Session to deal with management of charities<sup>27</sup> from being concerned in the management or control of any body<sup>28</sup>.

A person who is disqualified under head (3) or (7)(a) above may, after the expiry of two years beginning on the date of the dismissal or removal, apply in writing<sup>29</sup> to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification is to cease<sup>30</sup>. Where a person is disqualified under head (4) above, the disqualification ceases on the expiry of the period of two years beginning on the date upon which that person's tenure of office was terminated or such longer period as was specified when the tenure of office was terminated but, on application being made to the Secretary of State by that person, the Secretary of State may reduce the period of disqualification<sup>31</sup>.

1 Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1). This provision is expressed to be subject to reg 4 (cessation of disqualification): see the text to notes 29-31. As to the Health Protection Agency see PARA 213. As to membership of the Agency see PARA 214.

2 As to the meaning of 'United Kingdom' see PARA 15 note 8.

3 Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(a). For these purposes, the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted: reg 3(2).

4 Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(b). As to bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

5 For these purposes a person is not treated as having been in paid employment by reason only of his having been chairman or a member or director of the National Radiological Protection Board or a health service body other than an NHS foundation trust; or chairman, a governor or non-executive director of an NHS foundation trust: Health Protection Agency Regulations 2005, SI 2005/408, reg 3(3). 'Health service body' means any of the following, namely: a strategic health authority; a health authority; a special health authority; a health board constituted under the National Health Service (Scotland) Act 1978 s 2; a primary care trust; a local health board; the common services agency for the Scottish Health Service; an NHS trust (including such a trust established under the National Health Service (Scotland) Act 1978); an NHS foundation trust; the Independent Regulator of NHS Foundation Trusts; the Commission for Healthcare Audit and Inspection; the dental practice board or the Scottish dental practice board; the Secretary of State; the Welsh Ministers; the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14); a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990, SI 1990/247 (NI 3); a health and social services board established under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14); a health and social services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991, SI 1991/194 (NI 1); and the Department of Health, Social Services and Public Safety in Northern Ireland: Health Protection Agency Regulations 2005, SI 2005/408, reg 1(3) (definition amended by SI 2005/1622); Government of Wales Act 2006 Sch 11 para 32. As to strategic health authorities see PARA 94 et seq. As to health authorities see PARA 449 note 1. As to the special health authorities see PARA 136. As to primary care trusts see PARA 111. As to local health boards see PARA 75. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to the Independent Regulator of NHS Foundation Trusts see PARA 188. As to the Commission for Healthcare Audit and Inspection see PARA 552 et seq. As to the Secretary of State see PARA 6 note 8. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the National Radiological Protection Board see PARA 213 note 1.

6 Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(c)(i).

7 Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(c)(ii).

8 'Health service' is not defined in the Health Protection Agency Act 2004 or the Health Protection Agency Regulations 2005, SI 2005/408. As to the definition in the National Health Service Act 2006 see PARA 10 note 3.

9 Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(d)(i).

10 Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(d)(ii). As to the meaning of 'month' see PARA 28 note 16.

11 Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(d)(iii).

12 Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(e)(i) (amended by SI 2005/3491); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the Family Health Services Appeal Authority see PARA 443.

- 13    Ie pursuant to regulations made under the National Health Service Act 1977 s 29B(2A) (repealed).
- 14    Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(e)(ii). 'Primary care list' means: (1) a list referred to in the National Health Service Act 2006 s 159(1)(a)-(c) (see **PARA 402**); (2) the list of persons undertaking to provide general medical services prepared in accordance with regulations made under the National Health Service Act 1977 s 29 (repealed) as the list existed on or before 31 March 2004; (3) a list of persons approved by a primary care trust or health authority for the purpose of assisting in the provision of general medical services prepared in accordance with regulations under the National Health Service Act 1977 s 43D(1) (repealed) as such a list existed on or before 31 March 2004; or (4) a services list referred to in the National Health Service (Primary Care) Act 1997 s 8ZA(1)(a) (repealed) as such a list existed on or before 31 March 2004: Health Protection Agency Regulations 2005, SI 2005/408, reg 1(3).
- 15    Ie on grounds corresponding to the conditions referred to in the National Health Service Act 2006 s 151(2), (3) or (4): see **PARA 388**.
- 16    Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(e)(iii).
- 17    Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(e)(iv).
- 18    Ie on any of the grounds set out in the National Health Service Act 2006 s 151(2), (3) or (4) (see **PARA 388**) or by a direction of the NHS Tribunal. 'NHS Tribunal' means the Tribunal constituted under the National Health Service Act s 46 (repealed): Health Protection Agency Regulations 2005, SI 2005/408, reg 1(3). The National Health Service Tribunal was abolished by the Health and Social Care Act 2001 s 16.
- 19    Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(e)(v).
- 20    Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(e)(vi).
- 21    Ie by virtue of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001, SI 2001/3744, reg 6(2) or the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002, SI 2002/1920, reg 6(2).
- 22    Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(e)(vii).
- 23    Ie under the Company Directors Disqualification Act 1986 (see **COMPANIES** vol 15 (2009) **PARA 1575** et seq) or the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150 (NI 4).
- 24    Ie made under the Insolvency Act 1986 s 429(2)(b): see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) **PARA 910**.
- 25    Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(f).
- 26    Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(g)(i). As to the removal from office of a charity trustee or trustee for a charity see **CHARITIES** vol 8 (2010) **PARAS 294, 566**. As to the Charity Commissioners see **CHARITIES** vol 8 (2010) **PARA 538** et seq.
- 27    Ie under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 s 7.
- 28    Health Protection Agency Regulations 2005, SI 2005/408, reg 3(1)(g)(ii).
- 29    As to the meaning of 'writing' see **PARA 7** note 2.
- 30    Health Protection Agency Regulations 2005, SI 2005/408, reg 4(1). Where the Secretary of State refuses an application to remove a disqualification, no further application may be made by that person until the expiry of the period of two years beginning with the date of the application and this provision applies to any subsequent application: reg 4(2).
- 31    Health Protection Agency Regulations 2005, SI 2005/408, reg 4(3).

## UPDATE

### 217 Disqualification for appointment

NOTE 5--'Health service body' also means the Care Quality Commission: SI 2005/408 reg 1(3) (amended by SI 2008/2250).



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## **218. Remuneration and allowances.**

The Secretary of State<sup>1</sup> may make payments to any person who is or has been chairman or a non-executive member of the Health Protection Agency<sup>2</sup> of such allowances<sup>3</sup>, gratuities<sup>4</sup> and compensation<sup>5</sup> as he thinks appropriate<sup>6</sup>. The Secretary of State may determine the amount of the remuneration the Agency is to pay the chairman and non-executive members of the Agency<sup>7</sup>; and he may determine the amount the Agency is to pay by way of a pension, allowance or gratuity to or in respect of the chairman or a non-executive member of the Agency<sup>8</sup>. Where a person ceases to be chairman or a non-executive member of the Agency and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may decide that the Agency must make him a payment of such amount as the Secretary of State may determine<sup>9</sup>.

The Agency must determine the conditions of service of and the remuneration and allowances payable to the executive members (including the chief executive) of the Agency<sup>10</sup>. The chief executive or an executive member must not take part in a discussion or decision in pursuance of such determination which relates to his own conditions of service<sup>11</sup> or the remuneration and allowances payable to him<sup>12</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Health Protection Agency see PARA 213. As to membership of the Agency see PARA 214.

3 Health Protection Agency Act 2004 Sch 1 para 8(3)(a).

4 Health Protection Agency Act 2004 Sch 1 para 8(3)(b).

5 Health Protection Agency Act 2004 Sch 1 para 8(3)(c).

6 Health Protection Agency Act 2004 Sch 1 para 8(3). The Secretary of State must not act under this provision unless he first consults each of the devolved authorities: Sch 1 para 8(4). As to the meaning of 'devolved authority' see PARA 214 note 4. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

7 Health Protection Agency Regulations 2005, SI 2005/408, reg 5(1). Payments under reg 5 must be made at such times and in such manner and subject to such conditions as the Secretary of State may determine: reg 5(4).

8 Health Protection Agency Regulations 2005, SI 2005/408, reg 5(2). See also note 7.

9 Health Protection Agency Regulations 2005, SI 2005/408, reg 5(3). See also note 7.

10 Health Protection Agency Act 2004 Sch 1 para 9(1). If the chief executive or an executive member is a person seconded to the Agency his conditions of service and the remuneration and allowances payable to him must be determined by agreement between his employer and the Agency: Sch 1 para 9(4). As to the appointment of the chief executive see PARA 219.

11 See the Health Protection Agency Act 2004 Sch 1 para 9(2)(a), (3)(a).

12 See the Health Protection Agency Act 2004 Sch 1 para 9(2)(b), (3)(b).

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## **219. Staff.**

The Health Protection Agency<sup>1</sup> must appoint a person to be its chief executive<sup>2</sup>. The Agency may appoint such staff and on such conditions of service as it thinks fit<sup>3</sup>. A period of secondment on the staff of the Agency does not affect the continuity of a person's employment with the employer from whose service he is seconded<sup>4</sup>. A pension scheme maintained by the Atomic Energy Authority<sup>5</sup> for officers and employees of that authority may apply to such of the Agency's employees as the Agency determines<sup>6</sup>.

1 As to the Health Protection Agency see PARA 213.

2 Health Protection Agency Act 2004 Sch 1 para 7. As to the chief executive as a member of the Agency see PARA 214.

3 Health Protection Agency Act 2004 Sch 1 para 17(1). As to the transfer of staff of the former Health Protection Agency and National Radiological Protection Board see PARA 213 note 1.

4 Health Protection Agency Act 2004 Sch 1 para 17(2).

5 Ie under the Atomic Energy Authority Act 1954 s 1(9), Sch 1 para 7(2): see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1374.

6 See the Health Protection Agency Act 2004 Sch 1 para 18.



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## **220. Proceedings.**

The Health Protection Agency<sup>1</sup> may appoint such committees and sub-committees as it thinks appropriate<sup>2</sup>, and may delegate to a committee or sub-committee such of its functions as it thinks fit<sup>3</sup>. A committee or sub-committee may include or consist of persons who are not members of the Agency<sup>4</sup>. The Agency may make arrangements for the payment of such remuneration and allowances as it thinks fit to any person who is a member of a committee or sub-committee (whether or not he is also a member of the Agency)<sup>5</sup>. These provisions are subject to anything contained in a direction given by the Secretary of State<sup>6</sup>.

The Agency may make such arrangements as it thinks fit with any other person<sup>7</sup> for the discharge by that person of such of the functions of the Agency as are specified in the arrangements<sup>8</sup>.

Subject to anything contained in a direction given by the Secretary of State<sup>9</sup>, the Agency may make such provision as it thinks fit to regulate its own proceedings<sup>10</sup>. On any occasion when both the chairman and deputy chairman are, for any reason, unable to perform the duties of chairman, the other members of the Agency may appoint one of the non-executive members to act in place of the chairman<sup>11</sup>. The Public Bodies (Admission to Meetings) Act 1960 applies to the Agency<sup>12</sup>. The validity of any proceedings of the Agency is not affected by any defect in the appointment of the chairman or a member of the Agency<sup>13</sup>, or any vacancy in the office of chairman or in the membership of the Agency<sup>14</sup>.

The application of the Agency's seal is authenticated by the signature of the chairman or another member of the Agency<sup>15</sup>. A document purporting to be duly executed under the seal of the Agency or to be signed on behalf of the Agency must be received in evidence and (except to the extent that the contrary is shown) taken to be duly so executed or signed<sup>16</sup>.

1 As to the Health Protection Agency see PARA 213.

2 Health Protection Agency Act 2004 Sch 1 para 11(1).

3 Health Protection Agency Act 2004 Sch 1 para 11(3). As to the functions of the Agency see PARAS 224, 225; and as to the exercise of those functions see PARA 226.

4 Health Protection Agency Act 2004 Sch 1 para 11(2). As to membership of the Agency see PARA 214.

5 Health Protection Agency Act 2004 Sch 1 para 11(4). As to remuneration and allowances for members of the Agency see PARA 218.

6 Health Protection Agency Act 2004 Sch 1 para 11(5). The Secretary of State must not act under Sch 1 para 11(5) unless he first consults each of the devolved authorities: Sch 1 para 11(6). A direction must be given in writing and may be varied by a subsequent such direction: s 9(1). As to the Secretary of State see PARA 6 note 8. As to the meaning of 'devolved authority' see PARA 214 note 4. As to the meaning of 'writing' see PARA 7 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

7 As to the meaning of 'person' see PARA 17 note 2.

8 Health Protection Agency Act 2004 Sch 1 para 12(1). The arrangements may include such provision as the Agency thinks fit for the remuneration of such a person: Sch 1 para 12(2).

9 Health Protection Agency Act 2004 Sch 1 para 13(2). The Secretary of State must not give such a direction unless he first consults each of the devolved authorities: Sch 1 para 13(3).

- 10 Health Protection Agency Act 2004 Sch 1 para 13(1).
- 11 Health Protection Agency Act 2004 Sch 1 para 14. As to the chairman, deputy chairman and non-executive members see PARA 214.
- 12 Health Protection Agency Act 2004 Sch 1 para 15. As to the Public Bodies (Admission to Meetings) Act 1960 see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 40.
- 13 Health Protection Agency Act 2004 Sch 1 para 16(a).
- 14 Health Protection Agency Act 2004 Sch 1 para 16(b).
- 15 Health Protection Agency Act 2004 Sch 1 para 28(1).
- 16 Health Protection Agency Act 2004 Sch 1 para 28(2).

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## 221. Finance.

The Secretary of State<sup>1</sup> may pay to the Health Protection Agency<sup>2</sup> out of money provided by Parliament such sums as he thinks appropriate<sup>3</sup>; and the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland, and the Welsh Ministers may each pay to the Agency such sums as they think appropriate<sup>4</sup>. In deciding any amount to be paid by him the Secretary of State must take account of sums paid to the Agency by the Scottish Ministers<sup>5</sup>, the Department of Health, Social Services and Public Safety in Northern Ireland<sup>6</sup> and the Welsh Ministers<sup>7</sup>, and any income received by the Agency from any other source<sup>8</sup>. A payment under these provisions may be made at such time and subject to such conditions as the person<sup>9</sup> making the payment thinks appropriate<sup>10</sup>.

The Secretary of State may make loans to the Agency out of money provided by Parliament<sup>11</sup>; and a devolved authority<sup>12</sup> may make loans to the Agency<sup>13</sup>. A loan may be made on such terms (including terms as to repayment and interest) as the person making the loan decides<sup>14</sup>.

Sums received by the Agency by way of payment or loan<sup>15</sup> must be applied by it in accordance with any direction given by the person making the payment or loan (as the case may be)<sup>16</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Health Protection Agency see PARA 213.

3 Health Protection Agency Act 2004 Sch 1 para 19(1). As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.

4 See the Health Protection Agency Act 2004 Sch 1 para 19(3)-(5); Government of Wales Act 2006 Sch 11 para 32. As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

5 See the Health Protection Agency Act 2004 Sch 1 para 19(2)(a).

6 See the Health Protection Agency Act 2004 Sch 1 para 19(2)(b).

7 See the Health Protection Agency Act 2004 Sch 1 para 19(2)(c); Government of Wales Act 2006 Sch 11 para 32.

8 Health Protection Agency Act 2004 Sch 1 para 19(2)(d). As to the power of the Agency to make charges in respect of the exercise of its functions see s 4(6); and PARA 226.

9 As to the meaning of 'person' see PARA 17 note 12.

10 Health Protection Agency Act 2004 Sch 1 para 19(6).

11 Health Protection Agency Act 2004 Sch 1 para 20(1).

12 As to the meaning of 'devolved authority' see PARA 214 note 4.

13 Health Protection Agency Act 2004 Sch 1 para 20(2).

14 Health Protection Agency Act 2004 Sch 1 para 20(3).

15 Ie sums received under the Health Protection Agency Act 2004 Sch 1 para 19 or 20: see the text to notes 1-14.

16 Health Protection Agency Act 2004 Sch 1 para 21. A direction must be given in writing and may be varied by a subsequent such direction: s 9(1). As to the meaning of 'writing' see PARA 7 note 2.

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## 222. Accounts.

The Health Protection Agency<sup>1</sup> must keep accounts in such form as the Secretary of State decides<sup>2</sup>. The Agency must prepare annual accounts in respect of each financial year<sup>3</sup> in such form as the Secretary of State decides<sup>4</sup>. Before the end of the specified period<sup>5</sup> following each financial year to which the annual accounts relate the Agency must send a copy of the annual accounts to the Secretary of State<sup>6</sup>, the Comptroller and Auditor General<sup>7</sup>, and each of the devolved authorities<sup>8</sup>. The Comptroller and Auditor General must examine, certify and report on the annual accounts<sup>9</sup>, lay a copy of the accounts and of his report before each House of Parliament<sup>10</sup>, and send a copy of his report to each of the devolved authorities<sup>11</sup>.

The Auditor General for Wales and the Auditor General for Scotland<sup>12</sup> may each require<sup>13</sup> the Agency to give him access to the accounts at all reasonable times<sup>14</sup>, and any person<sup>15</sup> who has functions in relation to the accounts to provide him with reasonable assistance in the exercise of his functions<sup>16</sup>.

1 As to the Health Protection Agency see PARA 213.

2 Health Protection Agency Act 2004 Sch 1 para 22(1). As to the Secretary of State see PARA 6 note 8. As to financial provisions relating to the Agency see PARA 221.

3 The 'financial year' is the period starting on the day the Agency is established and ending on the next 31 March, and each succeeding period of 12 months: Health Protection Agency Act 2004 Sch 1 para 22(8). The Agency was established on 1 April 2005: see s 1(1); Health Protection Agency Act 2004 (Commencement) Order 2005, SI 2005/121, art 2(2). As to the meaning of 'month' see PARA 28 note 16.

4 Health Protection Agency Act 2004 Sch 1 para 22(2).

5 The 'specified period' is such period as the Secretary of State directs: Health Protection Agency Act 2004 Sch 1 para 22(7). A direction must be given in writing and may be varied by a subsequent such direction: s 9(1). As to the meaning of 'writing' see PARA 7 note 2.

6 Health Protection Agency Act 2004 Sch 1 para 22(3)(a).

7 Health Protection Agency Act 2004 Sch 1 para 22(3)(b). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

8 Health Protection Agency Act 2004 Sch 1 para 22(3)(c). As to the meaning of 'devolved authority' see PARA 214 note 4.

9 Health Protection Agency Act 2004 Sch 1 para 22(4)(a).

10 Health Protection Agency Act 2004 Sch 1 para 22(4)(b). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

11 Health Protection Agency Act 2004 Sch 1 para 22(4)(c). The Scottish Ministers must lay a copy of the accounts and of the Comptroller and Auditor General's report before the Scottish Parliament: Sch 1 para 22(5). The Department of Health, Social Services and Public Safety in Northern Ireland must lay a copy of the accounts and of the Comptroller and Auditor General's report before the Northern Ireland Assembly: Sch 1 para 22(6). As to the Scottish Ministers, the Scottish Parliament, and the Northern Ireland Assembly see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

12 As to the Auditor General for Wales and the Auditor General for Scotland see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

13 Such a requirement must not be made unless the person proposing to make the requirement first consults the Comptroller and Auditor General: Health Protection Agency Act 2004 Sch 1 para 23(2).

14 Health Protection Agency Act 2004 Sch 1 para 23(1)(a).

15 As to the meaning of 'person' see PARA 17 note 2.

16 Health Protection Agency Act 2004 Sch 1 para 23(1)(b).

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### **223. Annual report.**

The Health Protection Agency<sup>1</sup> must as soon as possible after the end of each financial year<sup>2</sup> prepare and send to the Secretary of State<sup>3</sup> a report on the carrying out of its functions<sup>4</sup> during that year<sup>5</sup>. The Secretary of State must lay before each House of Parliament a copy of every such report sent to him<sup>6</sup>. The Agency must provide the Secretary of State with such other reports and information as he directs relating to the exercise of its functions<sup>7</sup>.

Similar provision is made as to the preparation and sending by the Agency of annual and other reports to the Scottish Ministers<sup>8</sup>, the Department of Health, Social Services and Public Safety in Northern Ireland<sup>9</sup>, and the Welsh Ministers<sup>10</sup>.

1 As to the Health Protection Agency see PARA 213.

2 As to the meaning of 'financial year' see PARA 222 note 3.

3 As to the Secretary of State see PARA 6 note 8.

4 As to the functions of the Agency see PARAS 224, 225; and as to the exercise of those functions see PARA 226.

5 Health Protection Agency Act 2004 Sch 1 para 24(1).

6 Health Protection Agency Act 2004 Sch 1 para 24(3). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

7 Health Protection Agency Act 2004 Sch 1 para 24(2).

8 See the Health Protection Agency Act 2004 Sch 1 para 25. As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 See Health Protection Agency Act 2004 Sch 1 para 26.

10 See Health Protection Agency Act 2004 Sch 1 para 27; Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

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## **B. FUNCTIONS**

### **224. Health functions.**

The Health Protection Agency<sup>1</sup> has the following functions in relation to health<sup>2</sup>: (1) the protection of the community (or any part of the community) against infectious disease and other dangers to health<sup>3</sup>; (2) the prevention of the spread of infectious disease<sup>4</sup>; (3) the provision of assistance to any other person<sup>5</sup> who exercises functions in relation to the matters mentioned in heads (1) and (2) above<sup>6</sup>. The Agency also has such other functions in relation to health as the Secretary of State<sup>7</sup> (after consultation with the Welsh Ministers) directs<sup>8</sup>; and the Welsh Ministers (after consultation with the Secretary of State) direct<sup>9</sup>. The Secretary of State may (after consultation with the Welsh Ministers) direct the Agency to exercise any function conferred on him by or under an enactment<sup>10</sup>; and the Welsh Ministers may (after consultation with the Secretary of State) direct the Agency to exercise any function conferred on them by or under an enactment<sup>11</sup>.

1 As to the Health Protection Agency see PARA 213.

2 Health Protection Agency Act 2004 s 2(1). Section 2(1) does not apply to a function to the extent that it is: (1) exercisable within devolved competence (within the meaning of the Scotland Act 1998: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) (Health Protection Agency Act 2004 s 2(6)(a)); (2) relates to a transferred matter (within the meaning of the Northern Ireland Act 1998 s 4(1): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) (Health Protection Agency Act 2004 s 2(6)(b)). The Scottish Ministers may by order confer on the Agency a function of any description falling within s 2(1) to the extent that it is exercisable within devolved competence: s 2(7). As to such orders see s 2(8), (9). The Department of Health, Social Services and Public Safety in Northern Ireland may by order confer on the Agency a function of any description falling within s 2(1) to the extent that it is exercisable for the purposes of a transferred matter: s 2(10). As to such orders see s 2(11), (12). As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the exercise by the Agency of its functions see PARA 226.

3 Health Protection Agency Act 2004 s 2(1)(a).

4 Health Protection Agency Act 2004 s 2(1)(b).

5 As to the meaning of 'person' see PARA 17 note 2.

6 Health Protection Agency Act 2004 s 2(1)(c).

7 As to the Secretary of State see PARA 6 note 8.

8 Health Protection Agency Act 2004 s 2(2)(a); Government of Wales Act 2006 s 162(1), Sch 11 para 30. A direction under the Health Protection Agency Act 2004 s 2(2), (3) or (4) (see the text to notes 10, 11) must be given in regulations made by statutory instrument: s 9(2). A statutory instrument making regulations giving a direction under s 2(2)(a) or (3) is subject to annulment in pursuance of a resolution of either House of Parliament: s 9(3). A direction may be varied by a subsequent such direction: s 9(1)(b). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

The Secretary of State has directed the Agency to undertake in England the function of arranging for administering centres to vaccinate or revaccinate against yellow fever and the giving of certificates in respect of such vaccination (see the Health Protection Agency Regulations 2005, SI 2005/408, reg 7(a) (amended by SI 2007/1624)); and to exercise his function of appointment of medical inspectors under the Immigration Act 1971 in relation to medical inspectors who exercise functions otherwise than in Wales (see the Health Protection Agency Regulations 2005, SI 2005/408, reg 7(b)). As to the meanings of 'England' and 'Wales' see PARA 6 note 2. The Secretary of State has also directed the Agency to act as the national centre designated under the



International Health Regulations (2005) of the World Health Organisation: see Health Protection Agency Regulations 2005, SI 2005/408, reg 8 (added by SI 2007/1624).

9 Health Protection Agency Act 2004 s 2(2)(b); Government of Wales Act 2006 Sch 11 para 30.

10 Health Protection Agency Act 2004 s 2(3); Government of Wales Act 2006 Sch 11 para 30. The giving of a direction under the Health Protection Agency Act 2004 s 2(3) or (4) (see the text to note 11) does not transfer the function to the Agency (s 2(5)(a)) or prevent the exercise of the function by the Secretary of State or the Welsh Ministers (as the case may be) (s 2(5)(b)). See also note 8. As to the meaning of 'enactment' see PARA 10 note 7.

11 Health Protection Agency Act 2004 s 2(4); Government of Wales Act 2006 Sch 11 para 30. See also notes 8, 10.

## **UPDATE**

### **224 Health functions**

TEXT AND NOTES--The functions of the Health Protection Agency now include functions in relation to biological substances: see the Health Protection Agency Act 2004 s 2A (added by the Health and Social Care Act 2008 s 159(3)). 'Biological substance' means a substance whose purity or potency cannot, in the opinion of the Secretary of State, be adequately tested by chemical means: Health Protection Agency Act 2004 s 2A(5)

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## 225. Radiation protection functions.

The Health Protection Agency<sup>1</sup> has the following functions<sup>2</sup> in relation to risks connected with radiation (whether ionising or not): (1) the advancement of the acquisition of knowledge about protection from such risks<sup>3</sup>; (2) the provision of information and advice in relation to the protection of the community (or any part of the community) from such risks<sup>4</sup>. The Agency must also exercise such of the functions which were exercisable at 31 January 2005<sup>5</sup> by the National Radiological Protection Board<sup>6</sup> as are specified in a direction<sup>7</sup> given by the appropriate authority<sup>8</sup>. The appropriate authority may direct the Agency to exercise any other function in relation to protection from the risks mentioned in heads (1) and (2) above<sup>9</sup>.

If a health and safety body<sup>10</sup> asks the Agency to enter into an agreement with the body for the Agency to carry out any of the body's functions relating to radiation (whether ionising or not) on the body's behalf, the appropriate authority may direct the Agency to do so<sup>11</sup>.

In the exercise of any function it has under these provisions<sup>12</sup> which relates to any matter in respect of which a health and safety body has a function the Agency must consult the body<sup>13</sup> and have regard to the body's policies<sup>14</sup>.

1 As to the Health Protection Agency see PARA 213.

2 As to the exercise by the Agency of its functions see PARA 226.

3 Health Protection Agency Act 2004 s 3(1)(a).

4 Health Protection Agency Act 2004 s 3(1)(b).

5 I.e. the date of commencement of the Health Protection Agency Act 2004 s 3(2): see the Health Protection Agency Act 2004 (Commencement) Order 2005, SI 2005/121, art 2(1)(c).

6 As to the National Radiological Protection Board see PARA 213 note 1.

7 A direction must be given in writing and may be varied by a subsequent such direction: Health Protection Agency Act 2004 s 9(1). A direction under s 3 must not be given unless the person giving the direction has consulted each of the other persons mentioned in s 6 (see note 8): s 3(6). The giving of a direction under s 3(2) or (3) (see the text to note 9) does not transfer the function to the Agency (s 3(8)(a)) or prevent the exercise of the function by the appropriate authority (s 3(8)(b)). As to the meaning of 'person' see PARA 17 note 2.

8 Health Protection Agency Act 2004 s 3(2). Except as otherwise provided for in s 6(2)-(5) the 'appropriate authority' is the Secretary of State: s 6(1). In relation to any function which is exercisable in relation to Wales by the Welsh Ministers acting alone, the 'appropriate authority' is the Welsh Ministers: s 6(2); Government of Wales Act 2006 Sch 11 para 32. In relation to any function which is exercisable for the purposes of a transferred matter (within the meaning of the Northern Ireland Act 1998 s 4(1): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), the 'appropriate authority' is the Department of Health, Social Services and Public Safety in Northern Ireland: Health Protection Agency Act 2004 s 6(3). In relation to any function which is exercisable within devolved competence (within the meaning of the Scotland Act 1998: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), the 'appropriate authority' is the Scottish Ministers: Health Protection Agency Act 2004 s 6(4). In relation to any function which is exercisable in relation to any part of the United Kingdom by more than one of the persons mentioned in s 6(1)-(4), the 'appropriate authority' is both or all (as the case may be) of those persons acting jointly: s 6(5). As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the meaning of 'Wales' see PARA 6 note 2. As to the Secretary of State see PARA 6 note 8. As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the meaning of 'United Kingdom' see PARA 15 note 8.

9 Health Protection Agency Act 2004 s 3(3). See also note 7.

10 Each of the following is a health and safety body: the Health and Safety Commission in relation to Great Britain; and the Health and Safety Executive for Northern Ireland: Health Protection Agency Act 2004 s 3(7). As to the Health and Safety Commission see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq. As to the meaning of 'Great Britain' see PARA 15 note 8.

11 Health Protection Agency Act 2004 s 3(4). See also note 7.

12 le under the Health Protection Agency Act 2004 s 3.

13 Health Protection Agency Act 2004 s 3(5)(a).

14 Health Protection Agency Act 2004 s 3(5)(b).

## **UPDATE**

### **225 Radiation protection functions**

NOTE 8--The Health Protection Agency Act 2004 s 6(2)-(5) does not apply in relation to biological-substances functions: s 6(6) (s 6(6)-(8) added by the Health and Social Care Act 2008 s 159(4)). In relation to any biological-substances function, the appropriate authority is (1) the Secretary of State, and (2) the Department of Health, Social Services and Public Safety in Northern Ireland, acting jointly: Health Protection Agency Act 2004 s 6(7). For these purposes 'biological-substances function' means a function of the Agency under s 2A (see PARA 224), or a function of the Agency under s 2(1), (2) (a) or (b), (3), (4) or (10) (see PARA 224) that is a function in relation to a matter specified in s 2A(2): s 6(8).

NOTE 10--2004 Act s 3(7) amended: SI 2008/960.

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## **226. Exercise of functions.**

For the purpose of the exercise of its functions<sup>1</sup> the Health Protection Agency<sup>2</sup> may do any of the following: (1) engage in or commission research<sup>3</sup>; (2) obtain and analyse data and other information<sup>4</sup>; (3) provide laboratory services<sup>5</sup>; (4) provide other technical and clinical services<sup>6</sup>; (5) provide training in relation to matters in respect of which the Agency has functions<sup>7</sup>; (6) make available to any other body such persons, materials and facilities as it thinks appropriate<sup>8</sup>; (7) provide information and advice<sup>9</sup>.

The Agency may do anything which it thinks is appropriate for facilitating<sup>10</sup>, or incidental or conducive to<sup>11</sup>, the exercise of its functions<sup>12</sup>. This power includes power to acquire by agreement or dispose of land<sup>13</sup> and other property<sup>14</sup>; to form or participate in the formation of companies<sup>15</sup>; to enter into contracts<sup>16</sup>; to acquire, produce, manufacture and supply goods<sup>17</sup>; to develop and exploit ideas and exploit intellectual property<sup>18</sup>; and to provide accommodation<sup>19</sup>. The Agency may make charges in respect of anything done in pursuance of its functions<sup>20</sup>.

The Agency must exercise its functions efficiently and cost-effectively<sup>21</sup>. The appropriate authority<sup>22</sup> may direct<sup>23</sup> the Agency to have regard, in exercising any of its functions, to such aspects of the policy of the authority as the authority directs<sup>24</sup>; and the Agency must comply with any such direction<sup>25</sup>.

If the appropriate authority thinks that the Agency is to a significant extent failing to discharge any of its functions<sup>26</sup>, or failing to discharge any of its functions properly<sup>27</sup>, it may (after relevant consultation<sup>28</sup>) give the Agency such a direction as it thinks appropriate for remedying that failure<sup>29</sup>. If the Agency fails to comply or unreasonably delays in complying with such a direction the appropriate authority may, instead of the Agency, take such action as it thinks appropriate to remedy the failure<sup>30</sup>.

The Agency is to be treated as having power to make payments to local authorities in respect of the performance of their functions<sup>31</sup>, to receive payments from such authorities in respect of the performance of its functions<sup>32</sup>, and to enter arrangements with such authorities as to the exercise of functions<sup>33</sup>.

In the exercise of its functions the Agency must co-operate with other bodies<sup>34</sup> which exercise functions relating to health or any other matter in relation to which the Agency also exercises functions<sup>35</sup>; and such a body must co-operate with the Agency in the exercise by the body of any such function it has<sup>36</sup>.

1 As to the functions of the Agency see PARAS 224, 225.

2 As to the Health Protection Agency see PARA 213.

3 Health Protection Agency Act 2004 s 4(1)(a).

4 Health Protection Agency Act 2004 s 4(1)(b).

5 Health Protection Agency Act 2004 s 4(1)(c).

6 Health Protection Agency Act 2004 s 4(1)(d).

7 Health Protection Agency Act 2004 s 4(1)(e).

8 Health Protection Agency Act 2004 s 4(1)(f).

- 9 Health Protection Agency Act 2004 s 4(1)(g).
- 10 Health Protection Agency Act 2004 s 4(2)(a).
- 11 Health Protection Agency Act 2004 s 4(2)(b).
- 12 Health Protection Agency Act 2004 s 4(2). As to the interpretation of a similar provision in relation to local government see **LOCAL GOVERNMENT** vol 69 (2009) PARA 462.
- 13 As to the meaning of 'land' see PARA 24 note 2.
- 14 Health Protection Agency Act 2004 s 4(3)(a).
- 15 Health Protection Agency Act 2004 s 4(3)(b).
- 16 Health Protection Agency Act 2004 s 4(3)(c).
- 17 Health Protection Agency Act 2004 s 4(3)(d).
- 18 Health Protection Agency Act 2004 s 4(3)(e).
- 19 Health Protection Agency Act 2004 s 4(3)(f).
- 20 Health Protection Agency Act 2004 s 4(4).
- 21 Health Protection Agency Act 2004 s 4(6).
- 22 As to the meaning of 'appropriate authority' see PARA 225 note 8.
- 23 A direction must be given in writing and may be varied by a subsequent such direction: Health Protection Agency Act 2004 s 9(1). As to the meaning of 'writing' see PARA 7 note 2.
- 24 Health Protection Agency Act 2004 s 4(7).
- 25 Health Protection Agency Act 2004 s 4(8).
- 26 Health Protection Agency Act 2004 s 4(9)(a).
- 27 Health Protection Agency Act 2004 s 4(9)(b).
- 28 'Relevant consultation' is consultation by the appropriate authority giving the direction with each of the persons mentioned in the Health Protection Agency Act 2004 s 6 (see PARA 225 note 8) (if that person is not the authority) to the extent that the authority thinks that the exercise by the person of any function he has is likely to be affected in consequence of the giving of the direction: s 4(13). As to the meaning of 'person' see PARA 17 note 2.
- 29 Health Protection Agency Act 2004 s 4(9). See also note 23.
- 30 Health Protection Agency Act 2004 s 4(10).
- 31 See the Health Protection Agency Act 2004 s 4(5)(a) (substituted by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 257, 258(a)). For these purposes the Agency is to be treated as if in the National Health Service Act 2006 s 256(3) and s 257(2) (see PARA 134) after 'primary care trust' (in each place) there were inserted 'or the Health Protection Agency', and in the National Health Service (Wales) Act 2006 s 194(3) and 195(2) (see PARA 134) after 'local health board' (in each place) there were inserted 'or the Health Protection Agency': Health Protection Agency Act 2004 s 4(5)(a) (as so substituted).
- 32 See the Health Protection Agency Act 2004 s 4(5)(b) (substituted by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 257, 258(b)). For these purposes the Agency is to be treated as if in the National Health Service Act 2006 s 76(1) and the National Health Service (Wales) Act 2006 s 34(1) (see PARA 234) after 'strategic health authority' there were inserted 'the Health Protection Agency': Health Protection Agency Act 2004 s 4(5)(b) (as so substituted).
- 33 See the Health Protection Agency Act 2004 s 4(5)(c) (substituted by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 257, 258(c)). For these purposes the Agency is to be treated as if, in the National Health Service Act 2006 s 75(8) and the National Health Service (Wales) Act 2006 s 33(8) (see PARA 233), after 'NHS body' there were inserted 'includes the Health Protection Agency, but': Health Protection

Agency Act 2004 s 4(5)(c) (as so substituted). The disclosure of information to or by the Agency for the purposes of the exercise of a function which is the subject of an arrangement made by virtue of s 4(5)(c) or in pursuance of a duty of co-operation under s 5 (see the text to notes 34-36) does not breach any restriction on the disclosure of information (however imposed): s 4(11). However, s 4(11) does not authorise a disclosure of information which contravenes the Data Protection Act 1998 (see **CONFIDENCE AND DATA PROTECTION**): Health Protection Agency Act 2004 s 4(12).

34 Such bodies include bodies established outside the United Kingdom: Health Protection Agency Act 2004 s 5(3). As to the meaning of 'United Kingdom' see PARA 15 note 8.

35 Health Protection Agency Act 2004 s 5(1).

36 See the Health Protection Agency Act 2004 s 5(2).

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## **227. Publication of information.**

The Health Protection Agency<sup>1</sup> may publish in such manner as it thinks appropriate, information it obtains from any source<sup>2</sup>, and advice it provides to any person<sup>3</sup>. However, the Agency must not publish any matter: (1) which contravenes the Data Protection Act 1998<sup>4</sup>; (2) in contravention of an express restriction contained in any other enactment<sup>5</sup> on the publication of the matter<sup>6</sup>; (3) if the publication is not in the public interest<sup>7</sup>.

1 As to the Health Protection Agency see PARA 213.

2 Health Protection Agency Act 2004 s 7(1)(a).

3 Health Protection Agency Act 2004 s 7(1)(b). As to the meaning of 'person' see PARA 17 note 2. As to the functions of the Agency see PARAS 224, 225.

4 Health Protection Agency Act 2004 s 7(2)(a). As to the Data Protection Act 1998 see **CONFIDENCE AND DATA PROTECTION**.

5 'Enactment' includes any provision of or instrument made under an Act of the Scottish Parliament; and Northern Ireland legislation: Health Protection Agency Act 2004 s 7(3). As to the Scottish Parliament and as to devolved government in Northern Ireland see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 Health Protection Agency Act 2004 s 7(2)(b).

7 Health Protection Agency Act 2004 s 7(2)(c).

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## **(viii) Relationships between Health Service Bodies**

### **228. NHS contracts.**

An 'NHS contract' is an arrangement under which one health service body<sup>1</sup> (known as the 'commissioner') arranges for the provision to it by another health service body (known as the 'provider') of goods<sup>2</sup> or services which it reasonably requires for the purposes of its functions<sup>3</sup>. Whether or not an arrangement which constitutes an NHS contract would otherwise<sup>4</sup> be a contract in law, it must not be regarded for any purpose as giving rise to contractual rights or liabilities<sup>5</sup>; but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination<sup>6</sup>.

If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to a health service body: (1) that the terms proposed by another health service body are unfair by reason that the other is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement<sup>7</sup>; or (2) that for any other reason arising out of the relative bargaining position of the prospective parties any of the terms of the proposed arrangement cannot be agreed<sup>8</sup>, that health service body may refer the terms of the proposed arrangement to the Secretary of State<sup>9</sup>.

1 'Health service body' means any of the following: (1) a strategic health authority; (2) a primary care trust; (3) an NHS trust; (4) a special health authority; (5) a local health board; (6) a health board constituted under the National Health Service (Scotland) Act 1978 s 2; (7) a health and social services board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14); (8) the Common Services Agency for the Scottish Health Service; (9) the Wales Centre for Health; (10) the Health Protection Agency; (11) the Commission for Healthcare Audit and Inspection; (12) the Scottish Dental Practice Board; (13) the Secretary of State; (14) the Welsh Ministers; (15) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14); (16) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990, SI 1990/247 (NI 3); (17) a health and social services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991, SI 1991/194 (NI 1); (18) the Department of Health, Social Services and Public Safety: National Health Service Act 2006 s 9(4). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111. As to NHS trusts see PARA 155. As to the special health authorities see PARA 136. As to the meaning of 'local health board' see PARA 17 note 13. As to the Wales Centre for Health see PARA 595. As to the Health Protection Agency see PARA 213. As to the Commission for Healthcare Audit and Inspection see PARA 552 et seq. As to the Secretary of State see PARA 6 note 8. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

2 As to the meaning of 'goods' see PARA 12 note 7.

3 National Health Service Act 2006 s 9(1). As to the meaning of 'functions' see PARA 6 note 3. Section 139(6) (NHS contracts and the provision of local pharmaceutical services under pilot schemes: see PARA 429) makes further provision about acting as commissioner for the purposes of s 9(1): s 9(2). Schedule 4 para 15 (NHS trusts and NHS contracts: see PARA 169) makes further provision about an NHS trust acting as provider for the purposes of s 9(1): s 9(3). As to certain arrangements which are to be treated as NHS contracts see s 11; and PARA 230. As to the equivalent provision to the National Health Service Act 2006 s 9 in relation to Wales see the National Health Service (Wales) Act 2006 ss 7-9.

4 Ie apart from the National Health Service Act 2006 s 9(5).

5 National Health Service Act 2006 s 9(5).



- 6 National Health Service Act 2006 s 9(6). As to such determinations see PARA 229.
- 7 National Health Service Act 2006 s 9(7)(a).
- 8 National Health Service Act 2006 s 9(7)(b).
- 9 National Health Service Act 2006 s 9(7). As to such determinations see PARA 229.

## **UPDATE**

### **228 NHS contracts**

NOTE 1--Head (11) now refers to the Care Quality Commission: National Health Service Act 2006 s 9(4) (amended by the Health and Social Care Act 2008 Sch 5 para 82).

NOTE 3--National Health Service (Wales) Act 2006 s 7 amended: Health and Social Care Act 2008 Sch 5 para 87.

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## **229. Provision for adjudication.**

Where a reference is made to the Secretary of State<sup>1</sup> in respect of a dispute concerning arrangements which constitute an NHS contract<sup>2</sup> or negotiations intended to lead to such arrangements<sup>3</sup>, he may determine the matter himself or appoint a person to consider and determine it in accordance with regulations<sup>4</sup>.

By the determination of a reference in respect of negotiations intended to lead to arrangements which constitute an NHS contract, the appropriate person<sup>5</sup> may specify terms to be included in the proposed arrangement and may direct<sup>6</sup> that it be proceeded with<sup>7</sup>. A determination of a reference in respect of a dispute concerning arrangements which constitute an NHS contract may contain such directions (including directions as to payment) as the appropriate person considers appropriate to resolve the matter in dispute<sup>8</sup>. The appropriate person may by the determination in relation to an NHS contract vary the terms of the arrangement or bring it to an end<sup>9</sup>; and where an arrangement is so varied or brought to an end the variation or termination must be treated as being effected by agreement between the parties<sup>10</sup>, and the directions included in the determination may contain such provisions as the appropriate person considers appropriate in order to give effect to the variation or to bring the arrangement to an end<sup>11</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 I.e a reference to the Secretary of State under the National Health Service Act 2006 s 9(6): see PARA 228. As to the meaning of 'NHS contract' see PARA 228.

3 I.e a reference to the Secretary of State under the National Health Service Act 2006 s 9(7): see PARA 228.

4 National Health Service Act 2006 s 9(8). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. As to the regulations made see the National Health Service Contracts (Dispute Resolution) Regulations 1996, SI 1996/623, which have effect under the National Health Service Act 2006 s 9 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2).

5 'Appropriate person' means the Secretary of State or the person appointed under the National Health Service Act 2006 s 9(8) (see the text to notes 1-4): s 9(9).

6 A direction under the National Health Service Act 2006 s 9 by the Secretary of State must be given by instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

7 National Health Service Act 2006 s 9(10).

8 National Health Service Act 2006 s 9(11). See also note 6.

9 National Health Service Act 2006 s 9(12). However, this does not affect the generality of the power of determination under s 9(6) (see PARA 228): s 9(12).

10 National Health Service Act 2006 s 9(13)(a).

11 National Health Service Act 2006 s 9(13)(b).

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### **230. Arrangements to be treated as NHS contracts.**

Any arrangement under which a strategic health authority<sup>1</sup>, a primary care trust<sup>2</sup>, or such other health service body<sup>3</sup> as may be prescribed<sup>4</sup>, arrange for the provision to it: (1) by a contractor<sup>5</sup> under a general ophthalmic services contract<sup>6</sup>; (2) by a person<sup>7</sup> on an ophthalmic list<sup>8</sup>; (3) by a person on a pharmaceutical list<sup>9</sup>; or (4) by a person who has entered into a pharmaceutical care services contract<sup>10</sup>, of the specified goods or services<sup>11</sup>, must be treated<sup>12</sup> as an NHS contract<sup>13</sup>.

1 As to strategic health authorities see PARA 94 et seq.

2 As to primary care trusts see PARA 111.

3 'Health service body' means a body which is a health service body for the purposes of the National Health Service Act 2006 s 9 (see PARA 228 note 1); s 11(4).

4 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1). As to the Secretary of State see PARA 6 note 8. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

5 As to the meaning of 'contractor' see PARA 330 note 7.

6 National Health Service Act 2006 s 11(1)(a) (not yet in force in so far as it relates to primary ophthalmic services: see s 277(3)(j), (4), (5); and PARA 328 note 1). As to the meaning of 'general ophthalmic services contract' see PARA 330. As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.

7 As to the meaning of 'person' see PARA 17 note 2.

8 National Health Service Act 2006 s 11(1)(b). 'Ophthalmic list' means a list published in accordance with regulations made under the National Health Service (Wales) Act 2006 s 72(1)(a) (see PARA 338), the National Health Service (Scotland) Act 1978 s 26(2)(a), or the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), art 62(2)(a): National Health Service Act 2006 s 11(5). The reference to a list published in accordance with regulations made under the National Health Service (Scotland) Act 1978 s 26(2)(a) is a reference to the first part of the list which is published in accordance with regulations under s 26(2)(a)(i): National Health Service Act 2006 s 11(6).

9 National Health Service Act 2006 s 11(1)(c). 'Pharmaceutical list' includes a list published in accordance with regulations made under the National Health Service (Wales) Act 2006 s 83(2)(a) (see PARA 340), or the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), art 63(2A)(a): National Health Service Act 2006 s 11(7). As to the meaning of 'pharmaceutical list' see PARA 340 note 12.

10 National Health Service Act 2006 s 11(1)(d). A 'pharmaceutical care services contract' is a contract under the National Health Service (Scotland) Act 1978 s 17Q: see National Health Service Act 2006 s 11(1)(d).

11 National Health Service Act 2006 s 11(1). The specified goods or services are those that the body reasonably requires for the purposes of its functions, other than functions under s 115 (primary ophthalmic services: see PARA 328); Pt 7 Ch 1 or 2 (ss 126-143) (pharmaceutical services and local pharmaceutical services under pilot schemes: see PARA 339 et seq); or the National Health Service (Wales) Act 2006 Pt 6 (ss 71-79) (general ophthalmic services: see PARA 338) or Pt 7 Ch 1 or 2 (ss 80-101) (pharmaceutical services and local pharmaceutical services under pilot schemes: see PARA 339 et seq): National Health Service Act 2006 s 11(2). As to the meaning of 'goods' see PARA 12 note 7. As to the meaning of 'functions' see PARA 6 note 3.

12 le for the purposes of the National Health Service Act 2006 s 9 (other than s 9(7) and 9(10)): see PARAS 228, 229.

13 National Health Service Act 2006 s 11(3). As to the meaning of 'NHS contract' see PARA 228.



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#### **(4) LOCAL AUTHORITIES AND THE NHS**

##### **231. Co-operation between NHS bodies and local authorities.**

In exercising their respective functions<sup>1</sup> NHS bodies<sup>2</sup> (on the one hand) and local authorities<sup>3</sup> (on the other) must co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales<sup>4</sup>.

1 As to the meaning of 'functions' see PARA 6 note 3.

2 As to the meaning of 'NHS body' see PARA 8 note 2.

3 As to the meaning of 'local authority' see PARA 17 note 3.

4 National Health Service Act 2006 s 82. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

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## 232. Supply of goods and services by local authorities.

Each local authority<sup>1</sup> must make services<sup>2</sup> available to each NHS body<sup>3</sup> acting in its area, so far as is reasonably necessary and practicable to enable the NHS body to discharge its functions under the National Health Service Act 2006<sup>4</sup>. In the Local Authorities (Goods and Services) Act 1970<sup>5</sup> the expression 'public body' includes any strategic health authority<sup>6</sup>, special health authority<sup>7</sup> or primary care trust<sup>8</sup>, and, so far as relates to his functions under the National Health Service Act 2006, the Secretary of State<sup>9</sup>.

1 As to the meaning of 'local authority' see PARA 17 note 3.

2 'Services' means the services of persons employed by the local authority for the purposes of its functions under the Local Authority Social Services Act 1970 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006): National Health Service Act 2006 s 74(4). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'functions' see PARA 6 note 3.

3 As to the meaning of 'NHS body' see PARA 8 note 2.

4 National Health Service Act 2006 s 74(3). As to the equivalent provision to the National Health Service Act 2006 s 74 in relation to Wales see the National Health Service (Wales) Act 2006 s 32. As to the meaning of 'Wales' see PARA 6 note 2.

5 The National Health Service Act 2006 s 74(1) has effect as if made by an order under the Local Authorities (Goods and Services) Act 1970 s 1(5) and may be varied or revoked by such an order: National Health Service Act 2006 s 74(2). As to the Local Authorities (Goods and Services) Act 1970 see **LOCAL GOVERNMENT** vol 69 (2009) PARA 495.

6 As to strategic health authorities see PARA 94 et seq.

7 As to the special health authorities see PARA 136.

8 National Health Service Act 2006 s 74(1)(a). As to primary care trusts see PARA 111.

9 National Health Service Act 2006 s 74(1)(b). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

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### **233. Arrangements between NHS bodies and local authorities.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision for or in connection with enabling prescribed<sup>3</sup> NHS bodies<sup>4</sup> (on the one hand) and prescribed local authorities<sup>5</sup> (on the other) to enter into prescribed arrangements<sup>6</sup> in relation to the exercise of: (1) prescribed functions of the NHS bodies<sup>7</sup>; and (2) prescribed health-related functions of the local authorities<sup>8</sup>, if the arrangements are likely to lead to an improvement in the way in which those functions are exercised<sup>9</sup>. The arrangements which may be prescribed include arrangements:

- 137 (a) for or in connection with the establishment and maintenance of a fund which is made up of contributions by one or more NHS bodies and one or more local authorities<sup>10</sup>, and out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the authority or authorities<sup>11</sup>;
- 138 (b) for or in connection with the exercise by an NHS body on behalf of a local authority of prescribed health-related functions of the authority in conjunction with the exercise by the NHS body of prescribed functions of the NHS body<sup>12</sup>;
- 139 (c) for or in connection with the exercise by a local authority on behalf of an NHS body of prescribed functions of the NHS body in conjunction with the exercise by the local authority of prescribed health-related functions of the local authority<sup>13</sup>;
- 140 (d) as to the provision of staff<sup>14</sup>, goods<sup>15</sup> or services in connection with any arrangements mentioned in head (a), (b) or (c) above<sup>16</sup>;
- 141 (e) as to the making of payments by a local authority to an NHS body in connection with any arrangements mentioned in head (b) above<sup>17</sup>;
- 142 (f) as to the making of payments by an NHS body to a local authority in connection with any arrangements mentioned in head (c) above<sup>18</sup>.

Arrangements made by virtue of these provisions do not affect the liability of NHS bodies for the exercise of any of their functions<sup>19</sup>, the liability of local authorities for the exercise of any of their functions<sup>20</sup>, or any power or duty to recover charges in respect of services provided in the exercise of any local authority functions<sup>21</sup>. The Secretary of State may issue guidance to NHS bodies and local authorities in relation to consultation or applications for consent in respect of prescribed arrangements<sup>22</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 75 in relation to Wales see the National Health Service (Wales) Act 2006 s 33. As to the meaning of 'Wales' see PARA 6 note 2.

2 As to the making of regulations see PARA 9.

3 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1).

4 For these purposes 'NHS body' does not include a special health authority: National Health Service Act 2006 s 75(8). As to the meaning of 'NHS body' see PARA 8 note 2. As to the special health authorities see PARA 136.

5 As to the meaning of 'local authority' see PARA 17 note 3.

6 The regulations may make provision: (1) as to the cases in which NHS bodies and local authorities may enter into prescribed arrangements (National Health Service Act 2006 s 75(3)(a)); (2) as to the conditions which must be satisfied in relation to prescribed arrangements (including conditions in relation to consultation) (s 75(3)(b)); (3) for or in connection with requiring the consent of the Secretary of State to the operation of prescribed arrangements (including provision in relation to applications for consent, the approval or refusal of such applications and the variation or withdrawal of approval) (s 75(3)(c)); (4) in relation to the duration of prescribed arrangements (s 75(3)(d)); (5) for or in connection with the variation or termination of prescribed arrangements (s 75(3)(e)); (6) as to the responsibility for, and the operation and management of, prescribed arrangements (s 75(3)(f)); (7) as to the sharing of information between NHS bodies and local authorities (s 75(3)(g)). The provision which may be made by virtue of s 75(3)(f) includes provision in relation to: (a) the formation and operation of joint committees of NHS bodies and local authorities (s 75(4)(a)); (b) the exercise of functions which are the subject of prescribed arrangements (including provision in relation to the exercise of such functions by joint committees or employees of NHS bodies and local authorities) (s 75(4)(b)); (c) the drawing up and implementation of plans in respect of prescribed arrangements (s 75(4)(c)); (d) the monitoring of prescribed arrangements (s 75(4)(d)); (e) the provision of reports on, and information about, prescribed arrangements (s 75(4)(e)); (f) complaints and disputes about prescribed arrangements (s 75(4)(f)); (g) accounts and audit in respect of prescribed arrangements (s 75(4)(g)). As to the meaning of 'functions' see PARA 6 note 3. As to the regulations which have been made see the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, SI 2000/617, which by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) have effect under the National Health Service Act 2006 s 75.

7 National Health Service Act 2006 s 75(1)(a).

8 National Health Service Act 2006 s 75(1)(b). 'Health-related functions', in relation to a local authority, means functions of the authority which, in the opinion of the Secretary of State have an effect on the health of any individuals (s 75(8)(a)), have an effect on, or are affected by, any functions of NHS bodies (s 75(8)(b)), or are connected with any functions of NHS bodies (s 75(8)(c)).

9 National Health Service Act 2006 s 75(1). The reference in s 75(1) to 'an improvement in the way in which functions are exercised' includes an improvement in the provision to any individuals of any services to which those functions relate: s 75(7). Local authorities must appoint a director of children's services for the purposes of any functions exercisable by the authority under s 75 on behalf of an NHS body: see the Children Act 2004 s 18; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 190.

10 National Health Service Act 2006 s 75(2)(a)(i).

11 National Health Service Act 2006 s 75(2)(a)(ii).

12 National Health Service Act 2006 s 75(2)(b). As to the designation of a body party to such arrangements as a care trust see s 77; and PARA 235.

13 National Health Service Act 2006 s 75(2)(c).

14 As to the provision made with respect to the transfer of staff in connection with arrangements made by virtue of the National Health Service Act 2006 s 75 see s 75(9), Sch 18.

15 As to the meaning of 'goods' see PARA 12 note 7.

16 National Health Service Act 2006 s 75(2)(d).

17 National Health Service Act 2006 s 75(2)(e).

18 National Health Service Act 2006 s 75(2)(f).

19 National Health Service Act 2006 s 75(5)(a).

20 National Health Service Act 2006 s 75(5)(b).

21 National Health Service Act 2006 s 75(5)(c).

22 National Health Service Act 2006 s 75(6).

## UPDATE

### 233 Arrangements between NHS bodies and local authorities



NOTE 6--SI 2000/617 amended: SI 2008/3166, SI 2009/278.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(4) LOCAL AUTHORITIES AND THE NHS/234. Power of local authorities to make payments.

### **234. Power of local authorities to make payments.**

A local authority<sup>1</sup> may make payments to a strategic health authority<sup>2</sup>, a primary care trust<sup>3</sup> or a local health board<sup>4</sup> towards expenditure incurred or to be incurred by the body in connection with the performance by it of prescribed<sup>5</sup> functions<sup>6</sup>. Such a payment may be made in respect of expenditure of a capital or of a revenue nature or in respect of both kinds of expenditure<sup>7</sup>. The Secretary of State may by directions<sup>8</sup> prescribe conditions relating to payments<sup>9</sup>; and no payment may be made in respect of any expenditure unless the conditions relating to it conform with the conditions so prescribed for payments of that description<sup>10</sup>.

1 As to the meaning of 'local authority' see PARA 17 note 3.

2 As to strategic health authorities see PARA 94 et seq.

3 As to primary care trusts see PARA 111.

4 As to the meaning of 'local health board' see PARA 17 note 13.

5 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the making of regulations see PARA 9. As to the regulations which have been made see the National Health Service (Payments by Local Authorities to NHS Bodies) (Prescribed Functions) Regulations 2000, SI 2000/618, which by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) have effect under the National Health Service Act 2006 s 76. As to the equivalent provision to the National Health Service Act 2006 s 76 in relation to Wales see the National Health Service (Wales) Act 2006 s 34. As to the meaning of 'Wales' see PARA 6 note 2.

6 National Health Service Act 2006 s 76(1). As to the meaning of 'functions' see PARA 6 note 3. The Health Protection Agency is a body to which payments may be made: see the Health Protection Agency Act 2004 s 4(5) (b); and PARA 226.

7 National Health Service Act 2006 s 76(2).

8 Such directions must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

9 National Health Service Act 2006 s 76(3). The power under s 76(3) may in particular be exercised so as to require, in such circumstances as may be specified: (1) repayment of the whole or part of a payment (s 76(4) (a)); or (2) in respect of property acquired with payments, payment of an amount representing the whole or part of an increase in the value of the property which has occurred since its acquisition (s 76(4)(b)). As to the meaning of 'property' see PARA 4 note 9.

10 National Health Service Act 2006 s 76(5).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(4) LOCAL AUTHORITIES AND THE NHS/235. Care trusts.

### 235. Care trusts.

Where: (1) a primary care trust<sup>1</sup> or an NHS trust<sup>2</sup> is, or will be, a party to any existing or proposed LA delegation arrangements<sup>3</sup>; and (2) the Secretary of State<sup>4</sup> considers that designation of the body as a care trust would be likely to promote the effective exercise by the body of prescribed health-related functions<sup>5</sup> of a local authority<sup>6</sup> (in accordance with the arrangements) in conjunction with prescribed NHS functions<sup>7</sup> of the body<sup>8</sup>, the Secretary of State may designate the body as a care trust<sup>9</sup>. A primary care trust or NHS trust may, however, be designated only in pursuance of an application made to the Secretary of State jointly by each prescribed body<sup>10</sup>.

Where a body is designated as a care trust: (a) its designation may be revoked by the Secretary of State at any time of the Secretary of State's own motion<sup>11</sup>, and after such consultation as he considers appropriate<sup>12</sup>; (b) if an application for the revocation of its designation is made to the Secretary of State by one or more of the parties to the LA delegation arrangements, its designation must be revoked by the Secretary of State at the earliest time at which he considers it practicable to do so, having regard, in particular, to any steps that need to be taken in relation to those arrangements in connection with the revocation<sup>13</sup>. The power of the Secretary of State to dissolve a primary care trust or an NHS trust<sup>14</sup> includes power to dissolve such a primary care trust or NHS trust where he considers that it is appropriate to do so in connection with the designation of any other such body (whether existing or otherwise) as a care trust<sup>15</sup>.

The designation of a body as a care trust does not affect any of the functions, rights or liabilities of that body in its capacity as a primary care trust or NHS trust<sup>16</sup>.

1 As to primary care trusts see PARA 111.

2 As to NHS trusts see PARA 155.

3 National Health Service Act 2006 s 77(1)(a). 'LA delegation arrangements' means arrangements falling within s 75(2)(b) (see PARA 233), whether or not made in conjunction with any pooled fund arrangements: s 77(12). 'Pooled fund arrangements' means arrangements falling within s 75(2)(a) (see PARA 233): s 77(12).

4 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 77 in relation to Wales see the National Health Service (Wales) Act 2006 s 35. As to the meaning of 'Wales' see PARA 6 note 2.

5 As to the meaning of 'health related functions' see PARA 233 note 8: definition applied by the National Health Service Act 2006 s 77(12). 'Prescribed' means prescribed by regulations: see s 275(1). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. As to the regulations made under s 77 see note 15.

6 As to the meaning of 'local authority' see PARA 17 note 3.

7 'NHS functions' means functions exercisable by a primary care trust or NHS trust in its capacity as such: National Health Service Act 2006 s 77(12).

8 National Health Service Act 2006 s 77(1)(b).

9 National Health Service Act 2006 s 77(1). The designation of a body as a care trust must be effected by an order under s 18 (see PARA 111) or s 25 (see PARA 155) which (in the case of an existing body) amends the order establishing the body so as to change its name to one that includes the words 'Care Trust', or (in the case of a new body) establishes the body with a name that includes those words; and any revocation of its designation

must be effected by a further order under s 18 or s 25 which makes such provision for changing the name of the body as the Secretary of State considers expedient: s 77(6).

10 National Health Service Act 2006 s 77(2). If the application under s 77(2) requests the Secretary of State to do so, he may when designating a body as a care trust make a direction that while the body is designated it may (in addition to exercising health-related functions of the local authority as mentioned in s 77(1)(b) (see the text to note 8)) exercise such prescribed health-related functions of the local authority as are specified in the direction in relation to persons in any area so specified, even though it does not exercise any NHS functions in relation to persons in that area: s 77(3), (4). Such directions must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

11 National Health Service Act 2006 s 77(5)(a)(i).

12 National Health Service Act 2006 s 77(5)(a)(ii). See also note 9.

13 National Health Service Act 2006 s 77(5)(b). See also note 9.

14 As to the power of the Secretary of State to dissolve a primary care trust or an NHS trust see PARAS 111, 124, 167.

15 National Health Service Act 2006 s 77(7). Regulations may make such incidental, supplementary or consequential provision (including provision amending, repealing or revoking enactments) as the Secretary of State considers expedient in connection with s 77(1)-(7): s 77(8). The regulations may, in particular, make provision: (1) prescribing the manner and circumstances in which, and any conditions which must be satisfied before, an application may be made for a body to be designated as a care trust, or to cease to be so designated, and the information to be supplied with such an application (s 77(9)(a)); (2) enabling the Secretary of State to terminate appointments of persons as members of a primary care trust or of the board of directors of an NHS trust (or of a committee of such a primary care trust or NHS trust) where he considers that it is appropriate to do so in connection with the designation of the primary care trust or NHS trust as a care trust (s 77(9)(b)); (3) requiring the consent of the Secretary of State to be obtained before any prescribed change is made with respect to the governance of a body so designated (s 77(9)(c)); (4) for supplementing or modifying, in connection with the operation of s 77(3) (see note 10), any provision made by regulations under s 75 (see PARA 233) (s 77(9)(d)). As to the meaning of 'enactment' see PARA 10 note 7. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under these provisions: the Care Trusts (Applications and Consultation) Regulations 2001, SI 2001/3788; the National Health Service Trusts (Membership and Procedure) Regulations 1990, SI 1990/2024 (see PARA 157 et seq); the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89 (see PARA 113 et seq).

16 National Health Service Act 2006 s 77(10). In connection with the exercise by a body so designated of any relevant social services functions under LA delegation arrangements the Local Authority Social Services Act 1970 s 7 (authorities to exercise social services functions under guidance), and s 7A of that Act (directions as to exercise of such functions) (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011), apply to the body as if it were a local authority within the meaning of that Act: National Health Service Act 2006 s 77(11). 'Relevant social services functions' means health-related functions which are social services functions within the meaning of the Local Authority Social Services Act 1970 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006): National Health Service Act 2006 s 77(12).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(4) LOCAL AUTHORITIES AND THE NHS/236. Directed partnership arrangements.

### **236. Directed partnership arrangements.**

If the Secretary of State<sup>1</sup> is of the opinion: (1) that a specified body<sup>2</sup> (known as the 'failing body') is not exercising any of its functions<sup>3</sup> adequately<sup>4</sup>; and (2) that it would be likely to lead to an improvement in the way in which that function is exercised<sup>5</sup> if it were to be exercised by another such body under delegation arrangements<sup>6</sup>, or in accordance with pooled fund arrangements made with another such body<sup>7</sup>, the Secretary of State may direct<sup>8</sup> those bodies to enter into such delegation arrangements or pooled fund arrangements in relation to the exercise of the appropriate function or functions<sup>9</sup> as are specified in the direction<sup>10</sup>.

A principal direction<sup>11</sup> may make provision with respect to any of the matters with respect to which provision is required to be made<sup>12</sup> by the specified arrangements<sup>13</sup>, and such other matters as the Secretary of State considers appropriate<sup>14</sup>. The Secretary of State may in particular (either in a principal direction or in any subsequent direction) make provision: (a) for the determination, whether by agreement<sup>15</sup>, or (in default of agreement) by the Secretary of State or an arbitrator appointed by him<sup>16</sup>, of the amount of any payments which need to be made by one body to another for the purposes of the effective operation of the specified arrangements, and for the variation of any such determination<sup>17</sup>; (b) specifying the manner in which the amount of any such payments must be so determined (or varied)<sup>18</sup>; (c) requiring a body specified in the direction to supply to the Secretary of State or an arbitrator, for the purpose of enabling any such amount to be so determined (or varied), such information or documents as may be so specified<sup>19</sup>; (d) requiring any amount so determined (or varied) to be paid by and to such bodies as are specified in the direction<sup>20</sup>; (e) requiring capital assets specified in the direction to be made available by and to such bodies as are so specified<sup>21</sup>.

The Secretary of State may, when giving a principal direction to any specified bodies, give such directions to any other such body as he considers appropriate for or in connection with securing that full effect is given to the principal direction<sup>22</sup>. Before giving a principal direction to any specified bodies, the Secretary of State may direct either or both of the bodies in question to take such steps specified in the direction<sup>23</sup>, or give such other directions<sup>24</sup>, as he considers appropriate with a view to enabling him to determine whether the principal direction should be given<sup>25</sup>.

The revocation of a principal direction does not affect the continued operation of the specified arrangements<sup>26</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 ss 78, 79 in relation to Wales see the National Health Service (Wales) Act 2006 ss 36, 37. As to the meaning of 'Wales' see PARA 6 note 2.

2 The specified bodies are strategic health authorities, primary care trusts, NHS trusts, local health boards, and local authorities: National Health Service Act 2006 s 78(3)(a)-(e). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111. As to NHS trusts see PARA 155. As to the meaning of 'local health board' see PARA 17 note 13. As to the meaning of 'local authority' see PARA 17 note 3.

3 As to the meaning of 'functions' see PARA 6 note 3. In the National Health Service Act 2006 s 78(1) and (2) (see note 9) any reference to functions is, in relation to a local authority, a reference only to relevant social services functions of the authority: s 78(3). 'Relevant social services functions' means health-related functions which are social services functions within the meaning of the Local Authority Social Services Act 1970 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006): National Health Service Act 2006 s 78(5). 'Health-related functions' has the meaning given by s 75(8) (see PARA 233 note 8): s 78(5).

4 National Health Service Act 2006 s 78(1)(a).

5 Any reference to 'an improvement in the way in which any function is exercised' includes an improvement in the provision to any individuals of any services to which that function relates: National Health Service Act 2006 s 78(4).

6 National Health Service Act 2006 s 78(1)(b)(i). 'Delegation arrangements' means arrangements falling within s 75(2)(b) or (c) (see PARA 233), whether or not made in conjunction with any pooled fund arrangements: s 78(5). 'Pooled fund arrangements' means arrangements falling within s 75(2)(a) (see PARA 233): s 78(5).

7 National Health Service Act 2006 s 78(1)(b)(ii).

8 A direction under the National Health Service Act 2006 s 78 or s 79 (see the text to notes 11-26) must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

9 'Appropriate function or functions' means: (1) the function of the failing body mentioned in the National Health Service Act 2006 s 78(1) (s 78(2)(a)); and (2) such other function of that body (if any) as the Secretary of State considers would, if exercised under or in accordance with the arrangements in question, be likely to contribute to an improvement in the exercise of the function referred to in head (1) (s 78(2)(b)). See also note 3.

10 National Health Service Act 2006 s 78(1).

11 'Principal direction' means a direction under the National Health Service Act 2006 s 78(1) (see the text to notes 1-10): see s 79(1).

12 Ie by virtue of regulations under the National Health Service Act 2006 s 75: see PARA 233.

13 National Health Service Act 2006 s 79(1)(a). 'Specified arrangements', in relation to a principal direction, means the arrangements specified in the direction in pursuance of s 78(1) (see the text to notes 1-10): s 79(6).

14 National Health Service Act 2006 s 79(1)(b).

15 National Health Service Act 2006 s 79(2)(a)(i).

16 National Health Service Act 2006 s 79(2)(a)(ii).

17 National Health Service Act 2006 s 79(2)(a).

18 National Health Service Act 2006 s 79(2)(b).

19 National Health Service Act 2006 s 79(2)(c).

20 National Health Service Act 2006 s 79(2)(d).

21 National Health Service Act 2006 s 79(2)(e).

22 National Health Service Act 2006 s 79(3).

23 National Health Service Act 2006 s 79(4)(a).

24 National Health Service Act 2006 s 79(4)(b).

25 National Health Service Act 2006 s 79(4).

26 National Health Service Act 2006 s 79(5).

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### **237. Supply of goods and services by the Secretary of State.**

The Secretary of State<sup>1</sup> may supply to local authorities<sup>2</sup>, and such public bodies<sup>3</sup> or classes of public bodies as he may determine<sup>4</sup>, any goods<sup>5</sup> or materials of a kind used in the health service<sup>6</sup>. The Secretary of State may make available to such persons<sup>7</sup> any facilities<sup>8</sup> provided by him<sup>9</sup> or by a primary care trust<sup>10</sup> for any service under the National Health Service Act 2006<sup>11</sup>, and the services of persons employed by the Secretary of State or by a strategic health authority<sup>12</sup>, a primary care trust, a special health authority<sup>13</sup> or a local health board<sup>14</sup>.

The Secretary of State may carry out maintenance work (including minor renewals, minor improvements and minor extensions) in connection with any land<sup>15</sup> or building for the maintenance of which a local authority is responsible<sup>16</sup>.

The Secretary of State may supply or make available to persons providing pharmaceutical services<sup>17</sup>, services under a general medical services contract<sup>18</sup>, a general dental services contract<sup>19</sup> or a general ophthalmic services contract<sup>20</sup>, services in accordance with arrangements<sup>21</sup> for the provision of primary medical or dental services<sup>22</sup>, or services under a pilot scheme<sup>23</sup> or an LPS scheme<sup>24</sup>, such goods, materials or other facilities as may be prescribed<sup>25</sup>.

The Secretary of State must make available to local authorities: (1) any services (other than the services of any person) or other facilities provided under the National Health Service Act 2006<sup>26</sup>; (2) the services provided as part of the health service by any person employed by the Secretary of State, a strategic health authority, a primary care trust, a special health authority or a local health board<sup>27</sup>; and (3) the services of any medical practitioner<sup>28</sup>, dental practitioner<sup>29</sup> or nurse employed by the Secretary of State, a strategic health authority, a primary care trust, a special health authority or a local health board otherwise than to provide services which are part of the health service<sup>30</sup>, so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health<sup>31</sup>. The Secretary of State may make such charges in respect of services or facilities so provided as may be agreed between the Secretary of State and the local authority or, in default of agreement, as may be determined by arbitration<sup>32</sup>.

The Secretary of State may arrange to make available to local authorities the services of persons: (a) providing pharmaceutical services<sup>33</sup>; (b) performing services under a general medical services contract, a general dental services contract or a general ophthalmic services contract<sup>34</sup>; (c) providing services in accordance with arrangements for the provision of primary medical or dental services<sup>35</sup>; (d) performing services under a pilot scheme or an LPS scheme<sup>36</sup>; or (e) providing strategic health authorities, primary care trusts, special health authorities or local health boards with services of a kind provided as part of the health service<sup>37</sup>, so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health<sup>38</sup>.

These powers<sup>39</sup> may be exercised on such terms as may be agreed, including terms as to the making of payments to the Secretary of State<sup>40</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89. As to the equivalent provision to the National Health Service Act 2006 ss 80, 81 in relation to Wales see the National Health Service (Wales) Act 2006 ss 38, 39. As to the meaning of 'Wales' see PARA 6 note 2.

- 2 National Health Service Act 2006 s 80(1)(a). As to the meaning of 'local authority' see PARA 17 note 3.
- 3 'Public bodies' includes public bodies in Northern Ireland: National Health Service Act 2006 s 80(2).
- 4 National Health Service Act 2006 s 80(1)(b).
- 5 As to the meaning of 'goods' see PARA 12 note 7.
- 6 National Health Service Act 2006 s 80(1). Any power to supply goods or materials under s 80 includes a power to purchase and store them (s 81(6)(a)), and a power to arrange with third parties for the supply of goods or materials by those third parties (s 81(6)(b)). As to the meaning of 'health service' see PARA 10 note 3.
- 7 The persons falling within the National Health Service Act 2006 s 80(1): see the text to notes 1-6. As to the meaning of 'person' see PARA 17 note 2.
- 8 As to the meaning of 'facilities' see PARA 12 note 7.
- 9 As to the duty of the Secretary of State to promote the health service see PARA 10; and as to his duty to provide certain services see PARA 12.
- 10 As to primary care trusts see PARA 111.
- 11 National Health Service Act 2006 s 80(3)(a).
- 12 As to strategic health authorities see PARA 94 et seq.
- 13 As to the special health authorities see PARA 136.
- 14 National Health Service Act 2006 s 80(3)(b). As to the meaning of 'local health board' see PARA 17 note 13. The Secretary of State must, before he makes available the services of any officer under s 80(3)(b), or s 80(6)(b) or (c) (see the text to notes 27-30) consult the officer or a body recognised by the Secretary of State as representing the officer (s 81(1)(a)), or satisfy himself that the body who employs the officer has consulted the officer about the matter (s 81(1)(b)). The Secretary of State may disregard the provisions of s 81(1) in a case where he considers it necessary to make the services of an officer available for the purpose of dealing temporarily with an emergency (s 81(2)(a)), and has previously consulted a body such as is mentioned in s 81(1)(b) about making services available in an emergency (s 81(2)(b)). The Secretary of State may, for the purposes of s 80(3)(b), or s 80(6)(b) or (c), give such directions to strategic health authorities, primary care trusts, special health authorities and local health boards to make the services of their officers available as he considers appropriate: s 81(3). Such directions must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'officer' see PARA 28 note 5.
- 15 As to the meaning of 'land' see PARA 24 note 2.
- 16 National Health Service Act 2006 s 80(4).
- 17 National Health Service Act 2006 s 80(5)(a). As to the meaning of 'pharmaceutical services' see PARA 339.
- 18 As to the meaning of 'general medical services contract' see PARA 242.
- 19 As to the meaning of 'general dental services contract' see PARA 278.
- 20 National Health Service Act 2006 s 80(5)(b) (in force except in so far as relating to primary ophthalmic services: see s 277(1), (3)(j), (4), (5)). As to the meaning of 'general ophthalmic services contract' see PARA 330. As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.
- 21 The arrangements under either the National Health Service Act 2006 s 92 (see PARA 267) or s 107 (see PARA 288).
- 22 National Health Service Act 2006 s 80(5)(c).
- 23 As to the meaning of 'pilot scheme' see PARA 419.
- 24 National Health Service Act 2006 s 80(5)(d). As to the meaning of 'LPS scheme' see PARA 432 note 14.
- 25 National Health Service Act 2006 s 80(5). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the making of regulations see PARA 9. As to the regulations which have



been made see the National Health Service (Family Practitioner Committees--Supply of Goods) Regulations 1974, SI 1974/191, which have effect under the National Health Service Act 2006 s 80 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2).

- 26 National Health Service Act 2006 s 80(6)(a).
- 27 National Health Service Act 2006 s 80(6)(b). See also note 14.
- 28 As to the meaning of 'medical practitioner' see PARA 84 note 7.
- 29 As to the meaning of 'dental practitioner' see PARA 87 note 7.
- 30 National Health Service Act 2006 s 80(6)(c). See also note 14.
- 31 National Health Service Act 2006 s 80(6)(d).
- 32 National Health Service Act 2006 s 81(5). As to the recovery of charges see PARA 482.
- 33 National Health Service Act 2006 s 80(7)(a).
- 34 National Health Service Act 2006 s 80(7)(b) (in force except in so far as relating to primary ophthalmic services: see s 277(1), (3)(j), (4), (5)).
- 35 National Health Service Act 2006 s 80(7)(c).
- 36 National Health Service Act 2006 s 80(7)(d).
- 37 National Health Service Act 2006 s 80(7)(e).
- 38 National Health Service Act 2006 s 80(7).
- 39 ie the powers under the National Health Service Act 2006 ss 80 and 81.
- 40 National Health Service Act 2006 s 81(4).

## **UPDATE**

### **237 Supply of goods and services by the Secretary of State**

NOTES 24, 36--National Health Service Act 2006 s 80(5)(d), (7)(d) amended: Health Service Act 2009 Sch 1 para 7.

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### **238. Financial or other assistance to voluntary organisations.**

A local authority<sup>1</sup> may give assistance by way of grant or by way of loan, or partly in the one way and partly in the other, to a voluntary organisation<sup>2</sup> whose activities consist in, or include, the provision of a service similar to a relevant service<sup>3</sup>, the promotion of the provision of a relevant service or a similar one, the publicising of a relevant service or a similar one or the giving of advice with respect to the manner in which a relevant service or a similar one can best be provided<sup>4</sup>.

A local authority may also assist any such voluntary organisation by permitting it to use premises belonging to the authority on such terms as may be agreed, and by making available furniture, vehicles or equipment (whether by way of gift, or loan or otherwise) and the services of any staff who are employed by the authority in connection with the premises or other things which they permit the organisation to use<sup>5</sup>.

1 'Local authority' (except where used in the expression 'public or local authority') means the council of a county, other than a metropolitan county or of a county borough, metropolitan district or London borough or the Common Council of the City of London: Health Services and Public Health Act 1968 s 65(3)(a) (amended by the Local Government Act 1972 s 195(6), Sch 23 para 15(4); the Local Government (Wales) Act 1994 s 22(4), Sch 10 para 5(3)). As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.

2 'Voluntary organisation' means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority: Health Services and Public Health Act 1968 s 65(3)(d).

3 'Relevant service' means a service the provision of which must or may, by virtue of the relevant enactments, be secured by a local authority: Health Services and Public Health Act 1968 s 65(3)(c). 'Relevant enactments' means the Children and Young Persons Act 1933 Pt III (ss 31-76), Pt IV (ss 77-91) (see **CHILDREN AND YOUNG PERSONS**), the National Assistance Act 1948 Part III (ss 21-36) (see **SOCIAL SERVICES AND COMMUNITY CARE**), the Disabled Persons (Employment) Act 1958 s 3 (see **EMPLOYMENT** vol 39 (2009) PARA 539), the Mental Health Act 1959 s 10 (repealed) (so far as it relates to cases mentioned in s 10(a) (repealed)), the Children and Young Persons Act 1963 (except Pt II and s 56) (see **CHILDREN AND YOUNG PERSONS**), the Health Services and Public Health Act 1968, the Family Law Reform Act 1969 s 7(4) (repealed), the Children and Young Persons Act 1969 (see **CHILDREN AND YOUNG PERSONS**), the Matrimonial Causes Act 1973 s 43 (repealed), the Children Act 1975 (repealed), the Adoption and Children Act 2002 (see **CHILDREN AND YOUNG PERSONS**), the National Health Service Act 2006 and the National Health Service (Wales) Act 2006, the Children Act 1989 (see **CHILDREN AND YOUNG PERSONS**), the Powers of Criminal Courts (Sentencing) Act 2000 ss 63-66, and Schs 6 and 7 (see **CHILDREN AND YOUNG PERSONS**): Health Services and Public Health Act 1968 s 65(3)(b) (amended by the Children Act 1975 s 108(1)(a), Sch 3 para 47; the Adoption Act 1976 s 73(2), (3), Sch 3 para 10, Sch 4; the National Health Service Act 1977 s 129, Sch 15 para 47, Sch 16; the Child Care Act 1980 s 89, Sch 5 para 20, Sch 6; the Children Act 1989 s 108(5), (7), Sch 13 para 17(2), Sch 15; the Powers of Criminal Courts (Sentencing) Act 2000 s 165, Sch 9 para 33; the Adoption and Children Act 2002 s 139(1), Sch 3 paras 9, 11; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 33, 40).

4 Health Services and Public Health Act 1968 s 65(1) (amended by the Local Government Act 1985 s 102, Sch 17).

5 Health Services and Public Health Act 1968 s 65(2) (amended by the National Health Service Reorganisation Act 1973 s 57, Sch 5).

## **UPDATE**

### **238 Financial or other assistance to voluntary organisations**

NOTE 3--Health Services and Public Health Act 1968 s 65(3)(b) further amended and Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 33 repealed: Criminal Justice and Immigration Act 2008 Sch 4 para 10, Sch 28 Pt 1.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(4) LOCAL AUTHORITIES AND THE NHS/239. Local social services authorities.

### **239. Local social services authorities.**

Certain services in relation to care of mothers<sup>1</sup>, prevention of illness, care and after-care<sup>2</sup>, and home help and laundry facilities<sup>3</sup>, are functions<sup>4</sup> exercisable by local social services authorities<sup>5</sup>; and an authority providing such a service may recover such charge (if any) for it as it considers reasonable<sup>6</sup>. A local social services authority may conduct or assist other persons<sup>7</sup> in conducting research into matters relating to those functions<sup>8</sup>.

A local social services authority which provides premises, furniture or equipment<sup>9</sup> for any of the purposes of the National Health Service Act 2006 may permit the use of the premises, furniture or equipment by any other local social services authority<sup>10</sup>, any of the bodies established under the National Health Service Act 2006<sup>11</sup>, or a local education authority<sup>12</sup>. The permission may be on such terms (including terms with respect to the services of any staff employed by the authority giving permission) as may be agreed<sup>13</sup>.

A local social services authority may provide (or improve or furnish) residential accommodation for officers<sup>14</sup> employed by it for the purposes of any of its functions as a local social services authority<sup>15</sup>, or employed by a voluntary organisation<sup>16</sup> for the purposes of any services provided<sup>17</sup> under these provisions<sup>18</sup>.

1 National Health Service Act 2006 s 254(1)(a). A local social services authority may, with the Secretary of State's approval, and to such extent as he may direct must, make arrangements for the care of pregnant women and women who are breast feeding (other than for the provision of residential accommodation for them): Sch 20 para 1. A direction under Sch 20 must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 254, Sch 20 in relation to Wales see the National Health Service (Wales) Act 2006 s 192, Sch 15. As to the meaning of 'Wales' see PARA 6 note 2.

2 National Health Service Act 2006 s 254(1)(b). A local social services authority may, with the Secretary of State's approval, and to such extent as he may direct must, make arrangements for the purpose of the prevention of illness, for the care of persons suffering from illness and for the after-care of persons who have been suffering from illness: Sch 20 para 2(1), (2). For further provision in relation to such services see Sch 20 para 2(2)-(11). As to the meaning of 'illness' see PARA 10 note 5. See also note 1.

3 National Health Service Act 2006 s 254(1)(c). Each local social services authority: (1) must provide or arrange for the provision of, on such a scale as is adequate for the needs of its area, home help for households where such help is required owing to the presence of any person who is suffering from illness, is pregnant or has recently given birth, is aged, or handicapped as a result of having suffered from illness or by congenital deformity (Sch 20 para 3(1)(a), (2)); (2) may provide or arrange for the provision of laundry facilities for households for which home help is being, or can be, provided under head (1) (Sch 3 para 3(1)(b)). As to the meaning of 'local social services authority' see PARA 24 note 9.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 National Health Service Act 2006 s 254(1). This provision is expressed to be subject to s 3(1)(d) and (e): see PARA 12.

6 Health and Social Services and Social Security Adjudications Act 1983 s 17(1), (2)(c) (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 71, 72). If a person avails himself of such a service, and satisfies the authority providing the service that his means are insufficient for it to be reasonably practicable for him to pay for the service the amount which he would otherwise be obliged to pay for it, the authority must not require him to pay more for it than it appears to them that it is reasonably practicable for him to pay: Health and Social Services and Social Security Adjudications Act 1983 s 17(3). Any charge may, without prejudice to any other method of recovery, be recovered summarily as a civil debt: s 17(4). Section 17

has effect subject to any regulations under the Community Care (Delayed Discharges etc) Act 2003 s 15 (power to require certain community care services and services for carers to be free of charge: see **SOCIAL SERVICES AND COMMUNITY CARE**): Health and Social Services and Social Security Adjudications Act 1983 s 17(5) (amended by the Community Care (Delayed Discharges etc) Act 2003 s 17(3)). As to the ability of authorities to levy charges see further *R v Powys County Council, ex p Hambridge* (1998) 96 LGR 627, [1998] 3 FCR 190, CA. As to the summary recovery of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

7 As to the meaning of 'person' see PARA 17 note 2.

8 National Health Service Act 2006 Sch 20 para 4(1). This provision does not affect any powers conferred by any other Act: Sch 20 para 4(2).

9 'Equipment' includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle: National Health Service Act 2006 s 254(5).

10 National Health Service Act 2006 s 254(2)(a).

11 National Health Service Act 2006 s 254(2)(b). The reference to a body established under the National Health Service Act 2006 includes a reference to a body continued in existence by virtue of the Act: s 275(2).

12 National Health Service Act 2006 s 254(2)(c). As to local education authorities see **EDUCATION** vol 15(1) (2006 Reissue) PARA 20 et seq.

13 National Health Service Act 2006 s 254(3).

14 As to the meaning of 'officer' see PARA 28 note 5.

15 National Health Service Act 2006 s 254(4)(a).

16 As to the meaning of 'voluntary organisation' see PARA 17 note 3.

17 Ie under the National Health Service Act 2006 s 254 and Sch 20.

18 National Health Service Act 2006 s 254(4)(b).

## UPDATE

### 239 Local social services authorities

TEXT AND NOTES--The Secretary of State may give financial assistance to qualifying bodies which are engaged in the provision of social care services which an English local authority must or may provide or arrange to be provided under the National Health Service Act 2006 s 254 and Sch 20 or services which are similar to such services: see the Health and Social Care Act 2008 ss 149, 150, 156. Provision is made as to the forms in which such assistance may be given (Health and Social Care Act 2008 s 151), and the terms on which it may be given (s 152). The Secretary of State may direct certain specified NHS bodies to exercise any of his functions in relation to financial assistance under s 149 (s 153), may make arrangements for financial assistance to be given by another person or an English local authority (s 154), and may set up a company to fund qualifying bodies and people wanting to set up such bodies (s 155). In exercise of the power so conferred, the Secretary of State has made the Health and Social Care (Financial Assistance) Regulations 2009, SI 2009/649, which make provision for the conditions that must be met by qualifying bodies.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(4) LOCAL AUTHORITIES AND THE NHS/240. Local involvement networks.

**240. Local involvement networks.**

Each local authority<sup>1</sup> must make arrangements for the setting up of local involvement networks ensuring that there are, within its area, means for the involvement of people in the commissioning, provision, monitoring, and scrutiny of local care services<sup>2</sup>.

1 As to the meaning of 'local authority' see PARA 526 note 1.

2 See the Local Government and Public Involvement in Health Act 2007 ss 221-229; and PARA 526. As to the meaning of 'local care services' see PARA 526 note 4.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/A. DUTY TO PROVIDE PRIMARY MEDICAL SERVICES/241. Primary medical services.

## **(5) THE HEALTH SERVICES**

### **(i) Medical Services**

#### ***A. DUTY TO PROVIDE PRIMARY MEDICAL SERVICES***

##### **241. Primary medical services.**

Each primary care trust<sup>1</sup> must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary medical services<sup>2</sup> within its area, or secure their provision within its area<sup>3</sup>. A primary care trust may: (1) (in addition to any other power conferred on it) provide primary medical services itself (whether within or outside its area)<sup>4</sup>; (2) make such arrangements for their provision (whether within or outside its area) as it considers appropriate, and may in particular make contractual arrangements with any person<sup>5</sup>.

Each primary care trust must co-operate with each other primary care trust and each local health board<sup>6</sup> in the discharge of their respective functions<sup>7</sup> relating to the provision of primary medical services under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006<sup>8</sup>.

1 As to primary care trusts see PARA 111.

2 Regulations may provide that services of a prescribed description must, or must not, be regarded as primary medical services for the purposes of the National Health Service Act 2006: s 83(5). The regulations may in particular describe services by reference to the manner or circumstances in which they are provided: s 83(6). Each primary care trust must publish information about such matters as may be prescribed in relation to the primary medical services provided under the National Health Service Act 2006: s 83(3). As to the meaning of 'medical' see PARA 10 note 5. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. 'Prescribed' means prescribed by regulations: s 275(1). At the date at which this volume states the law no such regulations had been made.

Primary medical services were previously known as personal medical services (see the National Health Service Act 1977 s 29 (repealed)) before being redesignated as primary medical services following the creation of primary care trusts (see the National Health Service Act 1977 s 16CC (repealed)).

3 National Health Service Act 2006 s 83(1). As to the power of primary care trusts to provide assistance to persons providing or intending to provide primary medical services see s 96; and PARA 270. As to the use, in connection with the provision of primary medical services, of accommodation provided by the Secretary of State see s 98; and PARA 271. As to the equivalent provision to the National Health Service Act 2006 s 83 in relation to Wales see the National Health Service (Wales) Act 2006 s 41. As to the meaning of 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 s 83(2)(a).

5 National Health Service Act 2006 s 83(2)(b). As to such contractual arrangements see PARA 242 et seq. As to the meaning of 'person' see PARA 17 note 2.

6 As to the meaning of 'local health board' see PARA 17 note 13.

7 As to the meaning of 'functions' see PARA 6 note 3.

8 National Health Service Act 2006 s 83(4).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/B. GENERAL MEDICAL SERVICES CONTRACTS/242. General medical services contracts.

## **B. GENERAL MEDICAL SERVICES CONTRACTS**

### **242. General medical services contracts.**

A primary care trust<sup>1</sup> may enter into a contract<sup>2</sup>, known as a 'general medical services contract'<sup>3</sup>, under which primary medical services<sup>4</sup> are provided<sup>5</sup>. A general medical services contract may make such provision as may be agreed between the primary care trust and the contractor<sup>6</sup> or contractors in relation to the services to be provided under the contract<sup>7</sup>, remuneration under the contract<sup>8</sup>, and any other matters<sup>9</sup>. The services to be provided under a general medical services contract may include services which are not primary medical services<sup>10</sup>, and services to be provided outside the area of the primary care trust<sup>11</sup>. A general medical services contract must require the contractor or contractors to provide, for his or their patients<sup>12</sup>, primary medical services of such descriptions as may be prescribed<sup>13</sup>.

1 As to primary care trusts see PARA 111.

2 In accordance with the provisions of the National Health Service Act 2006 Pt 4 ss 85-98: see PARAS 243-248, 267-272.

3 National Health Service Act 2006 s 84(2).

4 As to primary medical services see PARA 241.

5 National Health Service Act 2006 s 84(1). As to the equivalent provision to the National Health Service Act 2006 ss 84, 85 in relation to Wales see the National Health Service (Wales) Act 2006 ss 42, 43. As to the meaning of 'Wales' see PARA 6 note 2. Any person providing primary medical services under a contract under the National Health Service Act 2006 s 84 or the National Health Service (Wales) Act 2006 s 42 is a public authority for the purposes of the Freedom of Information Act 2000 in respect of information relating to the provision of those services: see s 3, Sch 1 Pt III (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 para 68; National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(j)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

6 'Contractor', in relation to a general medical services contract, means any person entering into the contract with the primary care trust: National Health Service Act 2006 s 84(5). As to the meaning of 'person' see PARA 17 note 2. As to the persons eligible to enter general medical services contracts see s 86; and PARA 243.

7 National Health Service Act 2006 s 84(3)(a). As to provision in relation to the prescription of drugs, medicines and other substances see s 88; and PARA 245.

8 National Health Service Act 2006 s 84(3)(b). As to payments see s 87; and PARA 244.

9 National Health Service Act 2006 s 84(3)(c). As to required terms see s 89; and PARA 246. As to provision relating to disputes and enforcement see s 90; and PARA 247.

10 National Health Service Act 2006 s 84(4)(a).

11 National Health Service Act 2006 s 84(4)(b).

12 As to the meaning of 'patient' see PARA 15 note 6.

13 National Health Service Act 2006 s 85(1). 'Prescribed' means prescribed by regulations: s 275(1). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. The regulations may in particular describe services by reference to the manner or circumstances in which they are provided: s 85(2). As to the prescribed services see the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, regs 15, 16. The National Health Service (General Medical Services Contracts) Regulations



2004, SI 2004/291, have effect under the National Health Service Act 2006 s 85 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478. As to the meaning of 'England' see PARA 6 note 2.

## **UPDATE**

### **242 General medical services contracts**

NOTE 13--SI 2004/478 amended: SI 2008/1329, SI 2008/1425, SI 2009/462, SI 2010/729.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/B. GENERAL MEDICAL SERVICES CONTRACTS/243. Persons eligible to enter contracts.

### **243. Persons eligible to enter contracts.**

A primary care trust<sup>1</sup> may, subject to such conditions as may be prescribed<sup>2</sup>, enter into a general medical services contract<sup>3</sup> with: (1) a medical practitioner<sup>4</sup>; (2) two or more individuals practising in partnership where the statutory conditions<sup>5</sup> are satisfied<sup>6</sup>; or (3) a company limited by shares where the statutory conditions<sup>7</sup> are satisfied<sup>8</sup>.

1 As to primary care trusts see PARA 111.

2 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. As to the prescribed conditions see the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, regs 3-7 (reg 5 amended by SI 2007/3491). The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, have effect under the National Health Service Act 2006 s 86 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 As to the meaning of 'general medical services contract' see PARA 242.

4 National Health Service Act 2006 s 86(1)(a). As to the meaning of 'medical practitioner' see PARA 84 note 7. As to the equivalent provision to the National Health Service Act 2006 s 86 in relation to Wales see the National Health Service (Wales) Act 2006 s 44.

5 The statutory conditions are that: (1) at least one partner is a medical practitioner (National Health Service Act 2006 s 86(2)(a)); and (2) any partner who is not a medical practitioner is either an NHS employee, a section 92 employee, a section 107 employee, a section 50 employee, a section 64 employee, a section 17C employee or an Article 15B employee, a health care professional who is engaged in the provision of services under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, or an individual falling within the National Health Service Act 2006 s 93(1)(d) (see PARA 267) (s 86(2)(b)). 'Health care professional', 'NHS employee', 'section 92 employee', 'section 107 employee', 'section 50 employee', 'section 64 employee', 'section 17C employee' and 'Article 15B employee' have the meanings given by s 93 (see PARA 267): s 86(5). As to partnership see **PARTNERSHIP**.

6 National Health Service Act 2006 s 86(1)(a). Regulations may make provision as to the effect, in relation to a general medical services contract entered into by individuals practising in partnership, of a change in the membership of the partnership: s 86(4). As to such provision see the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, reg 13.

7 The statutory conditions are that: (1) at least one share in the company is legally and beneficially owned by a medical practitioner (National Health Service Act 2006 s 86(32)(a)); and (2) any share which is not so owned is legally and beneficially owned by a person referred to in s 86(2)(b) (see note 5) (s 86(3)(b)). As to companies limited by shares see **COMPANIES** vol 14 (2009) PARAS 78, 102.

8 National Health Service Act 2006 s 86(1)(b).

### **UPDATE**

### **243 Persons eligible to enter contracts**

NOTE 2--SI 2004/478 amended: SI 2008/1329, SI 2008/1425, SI 2009/462, SI 2010/729.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/B. GENERAL MEDICAL SERVICES CONTRACTS/244. Payments.

## **244. Payments.**

The Secretary of State<sup>1</sup> may give directions<sup>2</sup> as to payments<sup>3</sup> to be made under general medical services contracts<sup>4</sup>. Such directions may in particular: (1) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance<sup>5</sup>; (2) provide for payments to be made by reference to any scheme or scale specified in the direction<sup>6</sup>, or a determination made by any person<sup>7</sup> in accordance with factors specified in the direction<sup>8</sup>; (3) provide for the making of payments in respect of individual practitioners<sup>9</sup>; (4) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a primary care trust only if it is satisfied as to certain conditions)<sup>10</sup>; (5) make provision having effect from a date before the date of the direction, PROVIDED that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates<sup>11</sup>. Before giving a direction, the Secretary of State must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate<sup>12</sup>, and may consult such other persons as he considers appropriate<sup>13</sup>.

A general medical services contract must require payments to be made under the contract in accordance with any directions made under these provisions<sup>14</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 Such directions must be given by regulations or instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meanings of 'writing' and 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

3 'Payments' includes fees, allowances, reimbursements, loans and repayments: National Health Service Act 2006 s 87(5).

4 National Health Service Act 2006 s 87(1). As to the meaning of 'general medical services contract' see PARA 242. As to the equivalent provision to the National Health Service Act 2006 s 87 in relation to Wales see the National Health Service (Wales) Act 2006 s 45. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 s 87(3)(a).

6 National Health Service Act 2006 s 87(3)(b)(i).

7 As to the meaning of 'person' see PARA 17 note 2.

8 National Health Service Act 2006 s 87(3)(b)(ii).

9 National Health Service Act 2006 s 87(3)(c).

10 National Health Service Act 2006 s 87(3)(d). As to primary care trusts see PARA 111.

11 National Health Service Act 2006 s 87(3)(e).

12 National Health Service Act 2006 s 87(4)(a). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

13 National Health Service Act 2006 s 87(4)(b).

14 National Health Service Act 2006 s 87(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/B. GENERAL MEDICAL SERVICES CONTRACTS/245. Prescription of drugs, medicines and other substances.

## **245. Prescription of drugs, medicines and other substances.**

A general medical services contract<sup>1</sup> must contain provision requiring the contractor<sup>2</sup> or contractors to comply with any directions given by the Secretary of State<sup>3</sup> as to the drugs, medicines<sup>4</sup> or other substances which may or may not be ordered for patients<sup>5</sup> in the provision of medical<sup>6</sup> services under the contract<sup>7</sup>.

A direction under these provisions must be given by regulations<sup>8</sup>. However, such a direction may be given by an instrument in writing<sup>9</sup> where it gives effect to a request made in writing to the Secretary of State by a person<sup>10</sup> who is a holder of a Community marketing authorisation or United Kingdom marketing authorisation<sup>11</sup> in respect of the drug, medicine or other substance to which the request relates<sup>12</sup>.

1 As to the meaning of 'general medical services contract' see PARA 242.

2 As to the meaning of 'contractor' see PARA 242 note 6.

3 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

4 As to the meaning of 'medicine' see PARA 339 note 4.

5 As to the meaning of 'patient' see PARA 15 note 6.

6 As to the meaning of 'medical' see PARA 10 note 5.

7 National Health Service Act 2006 s 88(1). As to the equivalent provision to the National Health Service Act 2006 s 88 in relation to Wales see the National Health Service (Wales) Act 2006 s 46. As to the meaning of 'Wales' see PARA 6 note 2.

8 National Health Service Act 2006 s 88(2). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. As to the regulations which have been made see the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) Regulations 2004, SI 2004/629, which make provision as to the drugs, medicines and other substances that may not be ordered for patients in the provision of medical services under a general medical services contract (see reg 2, Sch 1) and those that may only be ordered in certain circumstances (see reg 3, Sch 2). The National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) Regulations 2004, SI 2004/629, have effect under the National Health Service Act 2006 s 88 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). As to the equivalent regulations in relation to Wales see the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) (Wales) Regulations 2004, SI 2004/1022 (amended by SI 2005/366).

9 As to the meaning of 'writing' see PARA 7 note 2.

10 As to the meaning of 'person' see PARA 17 note 2.

11 'Community marketing authorisation' and 'United Kingdom marketing authorisation' have the meaning given by the Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994, SI 1994/3144, reg 1 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 20): National Health Service Act 2006 s 88(4).

12 National Health Service Act 2006 s 88(3).

## **UPDATE**

## **245 Prescription of drugs, medicines and other substances**

NOTE 8--SI 2004/629 amended: SI 2009/2230. SI 2004/1022 further amended: SI 2009/1977, SI 2009/1838.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/B. GENERAL MEDICAL SERVICES CONTRACTS/246. Other required terms.

## **246. Other required terms.**

A general medical services contract<sup>1</sup> must contain such provision<sup>2</sup> as may be prescribed by regulations<sup>3</sup>. The regulations may in particular make provision as to: (1) the manner in which, and standards to which, services must be provided<sup>4</sup>; (2) the persons<sup>5</sup> who perform services<sup>6</sup>; (3) the persons to whom services will be provided<sup>7</sup>; (4) the variation of contract terms (other than required terms)<sup>8</sup>; (5) rights of entry and inspection (including inspection of clinical records and other documents)<sup>9</sup>; (6) the circumstances in which, and the manner in which, the contract may be terminated<sup>10</sup>; (7) enforcement<sup>11</sup>; (8) the adjudication of disputes<sup>12</sup>. The regulations must make provision as to the right of patients to choose the persons from whom they receive services<sup>13</sup>.

1 As to the meaning of 'general medical services contract' see PARA 242.

2 In addition to the provision required by the National Health Service Act 2006 ss 84-88: see PARAS 242-245.

3 National Health Service Act 2006 ss 89(1), 275(1). As to the equivalent provision to the National Health Service Act 2006 s 89 in relation to Wales see the National Health Service (Wales) Act 2006 s 47. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. As to the provision which has been made see the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, regs 11-26, Schs 2-6. The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, have effect under the National Health Service Act 2006 s 89 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 s 89(2)(a).

5 As to the meaning of 'person' see PARA 17 note 2.

6 National Health Service Act 2006 s 89(2)(b).

7 National Health Service Act 2006 s 89(2)(c). Regulations making provision under s 89(2)(c) may make provision as to the circumstances in which a contractor or contractors: (1) must or may accept a person as a patient to whom services are provided under the contract (s 89(3)(a)); (2) may decline to accept a person as such a patient (s 89(3)(b)); or (3) may terminate his or their responsibility for a patient (s 89(3)(c)). As to the meaning of 'contractor' see PARA 242 note 6. As to the meaning of 'patient' see PARA 15 note 6.

8 National Health Service Act 2006 s 89(2)(d). 'Required terms' are those required by or under Pt 4 (ss 83-98). Regulations under s 89(2)(d) may: (1) make provision as to the circumstances in which a primary care trust may impose a variation of contract terms (s 89(4)(a)); (2) make provision as to the suspension or termination of any duty under the contract to provide services of a prescribed description (s 89(4)(b)). Regulations making provision of the kind described in s 89(4)(b) may prescribe services by reference to the manner or circumstances in which they are provided: s 89(5). As to primary care trusts see PARA 111.

9 National Health Service Act 2006 s 89(2)(e).

10 National Health Service Act 2006 s 89(2)(f).

11 National Health Service Act 2006 s 89(2)(g).

12 National Health Service Act 2006 s 89(2)(h).

13 National Health Service Act 2006 s 89(5).

**UPDATE**

**246 Other required terms**

NOTE 3--SI 2004/291 Sch 6 amended: SI 2009/309, SI 2009/2230. SI 2004/478 amended: SI 2008/1329, SI 2008/1425, SI 2009/462, SI 2010/729.

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## **247. Disputes and enforcement.**

Regulations<sup>1</sup> may make provision for the resolution of disputes as to the terms of a proposed general medical services contract<sup>2</sup>. Such regulations may make provision for the referral of the terms of the proposed contract to the Secretary of State<sup>3</sup>, and for the Secretary of State, or a person<sup>4</sup> appointed by him, to determine the terms on which the contract may be entered into<sup>5</sup>.

Regulations may make provision for a person or persons entering into a general medical services contract to be regarded as a health service body<sup>6</sup>, in circumstances where he or they so elect<sup>7</sup>. Such regulations may include provision as to the application of the provisions relating to NHS contracts<sup>8</sup> in cases where persons practising in partnership elect to become a health service body<sup>9</sup>, and there is a change in the membership of the partnership<sup>10</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. As to the provision which has been made see the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, reg 9. The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, have effect under the National Health Service Act 2006 s 90 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 National Health Service Act 2006 s 90(1). As to the meaning of 'general medical services contract' see PARA 242. As to the equivalent provision to the National Health Service Act 2006 s 90 in relation to Wales see the National Health Service (Wales) Act 2006 s 48.

3 National Health Service Act 2006 s 90(2)(a). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

4 As to the meaning of 'person' see PARA 17 note 2.

5 National Health Service Act 2006 s 90(2)(b).

6 I.e. for any purposes of the National Health Service Act 2006 s 9: see PARA 228.

7 National Health Service Act 2006 s 90(3). Where: (1) by virtue of such regulations, s 9(11) (see PARA 229) applies in relation to a general medical services contract (s 90(5)(a)); and (2) a direction as to payments is made under s 9(11) in relation to the contract (s 90(5)(b)), the direction is enforceable in a county court (if the court so orders) as if it were a judgment or order of that court (s 90(5)). As to county courts see **COURTS** vol 10 (Reissue) PARA 701 et seq. As to the provision made see the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, reg 10.

8 I.e. the provisions of the National Health Service Act 2006 s 9: see PARAS 228, 229.

9 National Health Service Act 2006 s 90(4)(a).

10 National Health Service Act 2006 s 90(4)(b). As to the provision made see the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, reg 10.

## **UPDATE**

### **247 Disputes and enforcement**

NOTE 1--SI 2004/478 amended: SI 2008/1329, SI 2008/1425, SI 2009/462, SI 2010/729.





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### **C. PERFORMANCE OF PRIMARY MEDICAL SERVICES**

#### **(A) PERFORMERS LISTS**

##### **248. Persons performing primary medical services.**

Regulations<sup>1</sup> may provide that a health care professional<sup>2</sup> of a prescribed<sup>3</sup> description may not perform any primary medical service<sup>4</sup> for which a primary care trust is responsible<sup>5</sup> unless he is included in a list maintained under the regulations by a primary care trust<sup>6</sup>. The regulations may make provision in relation to such lists and in particular as to: (1) the preparation, maintenance and publication of a list<sup>7</sup>; (2) eligibility for inclusion in a list<sup>8</sup>; (3) applications for inclusion (including provision as to the primary care trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application)<sup>9</sup>; (4) the grounds on which an application for inclusion may or must be granted or refused<sup>10</sup>; (5) requirements with which a person<sup>11</sup> included in a list must comply (including the declaration of financial interests and gifts and other benefits)<sup>12</sup>; (6) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal)<sup>13</sup>; (7) circumstances in which a person included in a list may not withdraw from it<sup>14</sup>; (8) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State<sup>15</sup> or a person appointed by him)<sup>16</sup>; (9) the criteria to be applied in making decisions under the regulations<sup>17</sup>; (10) appeals against decisions made by a primary care trust under the regulations<sup>18</sup>; (11) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals<sup>19</sup>; and (12) disqualification of practitioners<sup>20</sup>.

The regulations may, in particular, also provide for: (a) a person's inclusion in a list to be subject to conditions determined by a primary care trust<sup>21</sup>; (b) a primary care trust to vary the conditions or impose different ones<sup>22</sup>; (c) the consequences of failing to comply with a condition (including removal from a list)<sup>23</sup>; (d) the review by a primary care trust of decisions made by it by virtue of the regulations<sup>24</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service (Performers Lists) Regulations 2004, SI 2004/585 (see PARAS 249-266) have effect under the National Health Service Act 2006 s 91. The National Health Service (Performers Lists) Regulations 2004, SI 2004/585, apply to England only: reg 1(2). As to the equivalent regulations in relation to Wales see the National Health Service (Performers Lists) (Wales) Regulations 2004, SI 2004/1020. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 'Health care professional' means a person who is a member of a profession regulated by a body mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294): National Health Service Act 2006 s 91(2)(a).

3 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

4 As to primary medical services see PARA 241.

5 A primary care trust is responsible for a medical service if it provides the service, or secures its provision, by or under any enactment: National Health Service Act 2006 s 91(2)(b). As to primary care trusts see PARA 111. As to the meaning of 'enactment' see PARA 10 note 7.

6 National Health Service Act 2006 s 91(1). As to the equivalent provision to the National Health Service Act 2006 s 91 in relation to Wales see the National Health Service (Wales) Act 2006 s 49.

7 National Health Service Act 2006 s 91(3)(a).

8 National Health Service Act 2006 s 91(3)(b).

9 National Health Service Act 2006 s 91(3)(c).

10 National Health Service Act 2006 s 91(3)(d).

11 As to the meaning of 'person' see PARA 17 note 2.

12 National Health Service Act 2006 s 91(3)(e).

13 National Health Service Act 2006 s 91(3)(f).

14 National Health Service Act 2006 s 91(3)(g).

15 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

16 National Health Service Act 2006 s 91(3)(h).

17 National Health Service Act 2006 s 91(3)(i).

18 National Health Service Act 2006 s 91(3)(j).

19 National Health Service Act 2006 s 91(3)(k). Regulations making provision as to the matters referred to in s 91(3)(k) may in particular authorise the disclosure of information by a primary care trust to the Secretary of State (s 91(6)(a)), and by the Secretary of State to a primary care trust (s 91(6)(b)).

20 National Health Service Act 2006 s 91(3). The provision that may be so made is any provision corresponding to anything in ss 151-159 (see PARAS 388, 390, 394, 395, 397, 401, 402): see s 91(3).

21 National Health Service Act 2006 s 91(4)(a). The imposition of conditions must be with a view to preventing any prejudice to the efficiency of the services to which a list relates (s 91(5)(a)), or preventing fraud (s 91(5)(b)).

22 National Health Service Act 2006 s 91(4)(b). See also note 21.

23 National Health Service Act 2006 s 91(4)(c).

24 National Health Service Act 2006 s 91(4)(d).

## **UPDATE**

### **248 Persons performing primary medical services**

NOTE 1--SI 2004/1020 amended: SI 2008/1425, SI 2010/729.

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## (B) PREPARATION OF PERFORMERS LISTS

### 249. Preparation and publication of performers lists.

A primary care trust<sup>1</sup> must prepare and publish<sup>2</sup> a medical performers list<sup>3</sup> and a dental performers list<sup>4</sup>. Performers lists<sup>5</sup> must be available for public inspection<sup>6</sup>.

An application by a performer<sup>7</sup> for the inclusion of his name in a performers list must be made by sending the primary care trust an application in writing<sup>8</sup>, which must include the prescribed information<sup>9</sup>, the prescribed undertakings, certificate and consents<sup>10</sup>, any declaration required<sup>11</sup>, and any further information, undertakings, consents or declarations required<sup>12</sup>.

Where a performer has been removed from its performers list<sup>13</sup> by a primary care trust on the grounds that he had been convicted of a criminal offence, and that conviction is overturned on appeal, it may agree to include him in its performers list without a full application if it is satisfied that there are no other matters that need to be considered<sup>14</sup>, and it has received an undertaking from him to comply with the statutory requirements<sup>15</sup>. In such a case, if the conviction is reinstated on a further appeal, the previous determination of the trust to remove that performer from its performers list once again has effect<sup>16</sup>.

1 As to primary care trusts see PARA 111.

2 In accordance with the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, Pt 1 (regs 3-20), as modified or supplemented by the relevant Part: reg 3(1) (reg 3(1) substituted by SI 2005/3491). 'Relevant Part' means in the case of a medical practitioner, the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, Pt 2 (regs 21-27) (see PARA 263 et seq); and in the case of a dentist, Pt 3 (regs 28-33) (see PARA 284 et seq): reg 2(1) (definition substituted by SI 2005/3491). As to the meaning of 'medical practitioner' see PARA 84 note 7. As to the meaning of 'dentist' see PARA 284 note 1.

3 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 3(1)(a) (as substituted: see note 2). 'Medical performers list' means a list of medical practitioners prepared and published pursuant to reg 3(1)(a): reg 2(1) (definition amended by SI 2005/3491). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

4 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 3(1)(b) (as substituted: see note 2). 'Dental performers list' means the list prepared by a primary care trust and published pursuant to reg 3(1)(b): reg 2(1) (definition added by SI 2005/3491). Inclusion on the performers list is not a possession for the purposes of the right to property protected under the European Convention on Human Rights (see the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), First Protocol (1952), art 1): *R (on the application of Malik) v Waltham Forest NHS Primary Care Trust* [2007] EWCA Civ 265, [2007] ICR 1101, [2007] IRLR 529. As to the right to property see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 165.

5 'Performers list' means a list prepared and published pursuant to the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 3(1) (see the text to notes 1-4): reg 2(1).

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 3(2).

7 'Performer' means a health care professional: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 2(1). As to the meaning of 'health care professional' see PARA 248 note 2.

8 As to the meaning of 'writing' see PARA 7 note 2.

9 As to the prescribed information see the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 4(2).

10 As to the prescribed undertakings, certificate and consents see National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 4(3), (6) (reg 4(3) amended by SI 2005/502).

11 As to the declarations required see the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 4(4) (amended by SI 2005/893; SI 2006/635); National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 4(5) (amended by SI 2006/635).

12 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 4(1). As to further information, undertakings, consents or declarations required see reg 4(7). The applicant must also provide any further information, undertakings, consents or declarations required by the relevant Part: see reg 4(1).

13 As to removal from performers lists see PARA 254.

14 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 5(1)(a).

15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 5(1)(b). The statutory requirements are those of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585.

16 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 5(2).

## **UPDATE**

### **249 Preparation and publication of performers lists**

TEXT AND NOTES 1-4--A primary care trust must prepare and publish a medical performers list, a dental performers list and an ophthalmic performers list: see SI 2004/585 reg 3(1) (substituted by SI 2008/1187). As to ophthalmic performers lists, see PARAS 335A-335D.

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## **250. Decisions and grounds for refusal.**

Before making a decision on the performer's application<sup>1</sup>, the primary care trust<sup>2</sup> must check, as far as reasonably practicable, the information he provided and ensure that it has sight of relevant documents<sup>3</sup>, check with the NHS Business Services Authority<sup>4</sup> whether he has any record of fraud<sup>5</sup>, check with the Secretary of State<sup>6</sup> as to any information held by him as to any record about past or current investigations or proceedings involving or related to that performer<sup>7</sup>, and take up the references that he provided<sup>8</sup>.

The grounds on which a primary care trust may refuse to include a performer in its performers list<sup>9</sup> are<sup>10</sup> that: (1) having considered the declaration required in the application, and any other information or documents in its possession relating to him, it considers that he is unsuitable to be included in its performers list<sup>11</sup>; (2) having contacted the referees provided by him, it is not satisfied with the references<sup>12</sup>; (3) having checked with the NHS Business Services Authority for any facts that it considers relevant relating to past or current fraud investigations involving or related to him, and, having considered these and any other facts in its possession relating to fraud involving or relating to him, the trust considers these justify such refusal<sup>13</sup>; (4) having checked with the Secretary of State for any facts that he considers relevant relating to past or current investigations or proceedings involving or related to the performer, and, having considered these and any other facts in its possession involving or relating to the performer, the trust considers these justify such refusal<sup>14</sup>; or (5) there are any grounds for considering that admitting him to its performers list would be prejudicial to the efficiency of the services, which those included in that list perform<sup>15</sup>.

The grounds on which a primary care trust must refuse to include a performer in its performers list are<sup>16</sup> that: (a) he has not provided satisfactory evidence that he intends to perform the services, which those included in the relevant performers list perform, in its area<sup>17</sup>; (b) it is not satisfied he has the knowledge of English which, in his own interests or those of his patients<sup>18</sup>, is necessary in performing the services, which those included in the relevant performers list perform, in its area<sup>19</sup>; (c) he has been convicted in the United Kingdom<sup>20</sup> of murder<sup>21</sup>; (d) he has been convicted in the United Kingdom of a criminal offence, committed on or after the prescribed day<sup>22</sup>, and has been sentenced to a term of imprisonment of over six months<sup>23</sup>; (e) he is subject to a national disqualification<sup>24</sup>; (f) he has not updated<sup>25</sup> his application<sup>26</sup>; or (g) in a case where a person's inclusion in a performers list is to be subject to conditions imposed on appeal<sup>27</sup>, he does not notify it that he wishes to be included in its performers list subject to the specified conditions<sup>28</sup>.

Where the primary care trust is considering a refusal of the performer's application<sup>29</sup> it must consider all facts which appear to it to be relevant<sup>30</sup>. When the primary care trust has decided whether or not to include a performer in its performers list, it must notify him within seven days of the decision of that decision<sup>31</sup>; and if it has decided not to include him, the reasons for that (including any facts relied upon) and of any right of appeal<sup>32</sup> against that decision<sup>33</sup>.

1 As to applications see PARA 249. As to the meaning of 'performer' see PARA 249 note 7.

2 As to primary care trusts see PARA 111.

- 3 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(3)(a). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.
- 4 As to the NHS Business Services Authority see PARA 152.
- 5 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(3)(b) (amended by SI 2006/635).
- 6 As to the Secretary of State see PARA 6 note 8.
- 7 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(3)(c).
- 8 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(3)(d).
- 9 As to the meaning of 'performers list' see PARA 249 note 5.
- 10 Ie in addition to any prescribed in the relevant Part: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1). As to the meaning of 'relevant Part' see PARA 249 note 2.
- 11 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1)(a).
- 12 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1)(b).
- 13 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1)(c) (amended by SI 2006/635).
- 14 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1)(d).
- 15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1)(e).
- 16 Ie in addition to any prescribed in the relevant Part.
- 17 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(2)(a). 'Relevant performers list' means in the case of a medical practitioner, the medical performers list; and in the case of a dentist, the dental performers list: reg 2(1) (definition substituted by SI 2005/3491). As to the meaning of 'medical practitioner' see PARA 84 note 7. As to the meaning of 'medical performers list' see PARA 249 note 3. As to the meaning of 'dentist' see PARA 284 note 1. As to the meaning of 'dental performers list' see PARA 249 note 4. The National Health Service (Performers Lists) Regulations 2004, SI 2004/585, regulation 6(2)(a) does not apply in the case of an armed forces GP: reg 24(3). As to armed forces GPs see reg 21(1).
- 18 As to the meaning of 'patient' see PARA 15 note 6.
- 19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(2)(b).
- 20 As to the meaning of 'United Kingdom' see PARA 15 note 8.
- 21 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(2)(c). As to murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 89.
- 22 Ie the day prescribed in the relevant Part. The day prescribed in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, Pt 2 (regs 21-27) (see PARA 263 et seq) in respect of a medical performers list is 3 November 2003 or, if the medical practitioner had been included in a medical list or a supplementary list, 14 December 2001: reg 24(4). The day prescribed in Pt 3 (regs 28-33) (see PARA 284 et seq) is 3 March 2003 or, if the dentist had been included in a dental list, 14 December 2001: reg 31(3) (added by SI 2005/3491). As to medical lists, dental lists and supplementary lists see note 30.
- 23 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(2)(d).
- 24 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(2)(e). 'National disqualification' means a decision: (1) made by the Family Health Services Appeal Authority to nationally disqualify a performer under the National Health Service Act 1977 s 49N (repealed), the National Health Service Act 2006 s 159 (see PARA 402), or under regulations corresponding to those sections made under the National Health Service Act 1977 s 28X(4) (repealed) or the National Health Service Act 2006 s 91(3) (see PARA 248) or s 106(3) (see PARA 283); (2) to nationally disqualify a performer under provisions in force in Scotland or Northern Ireland corresponding to the National Health Service Act 1977 s 49N (repealed) or the National Health Service Act 2006 s 159; or (3) by the Tribunal, which is treated as a national disqualification by the Family Health Services Appeal Authority by virtue of the Abolition of the National Health Service Tribunal (Consequential

Provisions) Regulations 2001, SI 2001/3744, reg 6(4) or the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002, SI 2002/1920, reg 6(4)(b): National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 2(1) (definition amended by SI 2005/3491); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the Family Health Services Appeal Authority see PARA 443. 'Tribunal' means the tribunal constituted under the National Health Service Act 1977 s 46 (repealed) for England and Wales, and which, except for prescribed cases, had effect in relation to England until 14 December 2001 and in relation to Wales until 26 August 2002: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 2(1). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

25 Ie in accordance with the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(4): see PARA 251.

26 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(2)(f).

27 Ie a case to which the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(4) applies: see PARA 258.

28 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(2)(g).

29 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1) or (2): see the text to notes 9-28.

30 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(4). The trust must in particular take into consideration, in relation to reg 6(1)(a), (c) or (d): (1) the nature of any offence, investigation or incident (reg 6(4)(a)); (2) the length of time since any offence, incident, conviction or investigation (reg 6(4)(b)); (3) whether there are other offences, incidents or investigations to be considered (reg 6(4)(c)); (4) any action or penalty imposed by any licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation (reg 6(4)(d)); (5) the relevance of any offence, investigation or incident to his performing the services, which those included in the relevant performers list perform, and any likely risk to his patients or to public finances (reg 6(4)(e)); (6) whether any offence was a sexual offence for the purposes of the Sexual Offences Act 2003 Pt 2 (ss 80-136) (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 560), or if it had been committed in England and Wales, would have been such an offence (reg 6(4)(f) (amended by SI 2005/893)); (7) whether he has been refused admission to, or conditionally included in, or removed, contingently removed or is currently suspended from, any list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the primary care trust or equivalent body for such action (National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(4)(g)); and (8) whether he was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from, any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the primary care trust or equivalent body in each case (reg 6(4)(h)). When the primary care trust takes into consideration any of the matters set out in reg 6(4), it must consider the overall effect of all the matters being considered: reg 6(5).

'Licensing or regulatory body' means a body that licenses or regulates any profession of which the performer is, or has been a member, including a body regulating or licensing the education, training or qualifications of that profession, and includes any body which licenses or regulates any such profession, its education, training or qualifications, outside the United Kingdom: reg 2(1). 'Equivalent body' means a local health board in Wales, a health board or an NHS trust in Scotland, a Health and Social Services Board in Northern Ireland, in relation to any time prior to 1 October 2002 a health authority in England or, in relation to any time prior to 1 April 2003, a health authority in Wales: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 2(1). 'Equivalent list' means a list kept by an equivalent body: reg 2(1). 'List' means a list referred to in the National Health Service Act 1977 s 49N(1)(a)-(c) (repealed) (see now the National Health Service Act 2006 s 159; and PARA 402), a performers list, a dental list prepared by a primary care trust under the National Health Service (General Dental Services) Regulations 1992, SI 1992/661, reg 4(1) (revoked), a medical list prepared by a primary care trust under the National Health Service (General Medical Services) Regulations 1992, SI 1992/635, reg 4 (revoked), a services list prepared by a primary care trust under the National Health Service (Personal Medical Services) (Services List) and the (General Medical Services) and (General Medical Services Supplementary List) Amendment Regulations 2003, SI 2003/2644, reg 3 (revoked) or a supplementary list prepared by a primary care trust under the National Health Service (General Medical Services Supplementary List) Regulations 2001, SI 2001/3740, reg 3 (revoked): National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 2(1) (definition amended by SI 2005/3491). 'Originating events' means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 2(1). 'Director' means a director of a body corporate, or a member of the body of persons controlling a body corporate (whether or not a limited liability partnership): reg 2(1). As to the meaning of 'person' see PARA 17 note 2. As to limited liability partnerships see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq.

31 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(6)(a).



32 le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258.

33 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(6)(b). When the primary care trust notifies the performer under reg 6(6)(b), it must notify him that if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it gave him the notice informing him of its decision, and tell him how to exercise any such right: reg 6(7) (added by SI 2005/3491).

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## **251. Deferment of decision on application.**

A primary care trust<sup>1</sup> may defer a decision on a performer's<sup>2</sup> application to be included in a performers list<sup>3</sup>, where:

- 143 (1) there are, in respect of him: (a) criminal proceedings in the United Kingdom<sup>4</sup>; or (b) proceedings elsewhere in the world relating to conduct which, if it had occurred in the United Kingdom, would constitute a criminal offence<sup>5</sup>, which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to his removal from its performers list, if he were to be included in it<sup>6</sup>;
- 144 (2) in respect of a body corporate of which he is, has in the preceding six months<sup>7</sup> been, or was at the time of the originating events a director<sup>8</sup> there are: (a) criminal proceedings in the United Kingdom<sup>9</sup>; or (b) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence<sup>10</sup>, which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to his removal from its performers list, if he were to be included in it<sup>11</sup>;
- 145 (3) there is an investigation anywhere in the world by his licensing or regulatory body<sup>12</sup> or any other investigation (including one by another primary care trust or equivalent body<sup>13</sup>) relating to him in his professional capacity that, if adverse, would be likely to lead to his removal from its performers list, if he were to be included in it<sup>14</sup>;
- 146 (4) he is suspended from any list or equivalent list<sup>15</sup>;
- 147 (5) a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events a director, is suspended from any list or equivalent list<sup>16</sup>;
- 148 (6) the Family Health Services Appeal Authority<sup>17</sup> is considering an appeal by him against a decision of a primary care trust to refuse to include him in its performers list, or to conditionally include him in or to contingently remove him from, or to remove him from any list kept by a primary care trust and if that appeal is unsuccessful the trust would be likely to remove him from its performers list, if he were to be included in it<sup>18</sup>;
- 149 (7) the Family Health Services Appeal Authority is considering an appeal by a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a primary care trust or equivalent body to refuse to admit the body corporate to its list, or to conditionally include it in or to remove or contingently remove it from any list kept by a primary care trust or equivalent body, and if that appeal is unsuccessful the trust would be likely to remove him from its performers list, if he were to be included in it<sup>19</sup>;
- 150 (8) he is being investigated by the NHS Business Services Authority<sup>20</sup> in relation to any fraud, where the result, if adverse, would be likely to lead to his removal from the trust's performers list, if he were to be included in it<sup>21</sup>;
- 151 (9) a body corporate, of which he is, has in the preceding six months been, or was at the time of the originating events a director, is being investigated in relation to any fraud, where the result, if adverse, would be likely to lead to his removal from the trust's performers list, if he were to be included in it<sup>22</sup>; and

152 (10) the Family Health Services Appeal Authority is considering an application from a primary care trust for the national disqualification<sup>23</sup> of him or a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events a director<sup>24</sup>.

The primary care trust may only defer a decision until the outcome of the relevant event mentioned in any of heads (1) to (10) above is known<sup>25</sup>. The primary care trust must notify the performer that it has deferred a decision on the application and the reasons for it<sup>26</sup>. Once the outcome of the relevant event is known, the primary care trust must notify the performer that he must within 28 days of the date of the notification (or such longer period as it may agree) update his application<sup>27</sup> and confirm in writing<sup>28</sup> that he wishes to proceed with his application<sup>29</sup>. Provided any additional information has been received within the 28 days or the time agreed, the primary care trust must notify the performer as soon as possible that his application to be included in its performers list has been successful<sup>30</sup>; or it has decided to refuse the application or impose conditions on his inclusion, the reasons for that (including any facts relied upon), and of any right<sup>31</sup> of appeal<sup>32</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'performer' see PARA 249 note 7.

3 As to such applications see PARA 249. As to the meaning of 'performers list' see PARA 249 note 5.

4 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(a)(i). As to the meaning of 'United Kingdom' see PARA 15 note 8. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

5 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(a)(ii).

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(a). As to removal from a list see PARA 254.

7 As to the meaning of 'month' see PARA 28 note 16.

8 As to the meanings of 'originating events' and 'director' see PARA 250 note 30.

9 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(b)(i).

10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(b)(ii).

11 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(b).

12 As to the meaning of 'licensing or regulatory body' see PARA 250 note 30.

13 As to the meaning of 'equivalent body' see PARA 250 note 30.

14 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(c).

15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(d). As to the meanings of 'list' and 'equivalent list' see PARA 250 note 30.

16 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(e).

17 As to the Family Health Services Appeal Authority see PARA 443.

18 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(f).

19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(g).

20 As to the NHS Business Services Authority see PARA 152.

21 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(h).

- 22 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(i).
- 23 As to the meaning of 'national disqualification' see PARA 250 note 24.
- 24 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(1)(j).
- 25 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(2).
- 26 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(3).
- 27 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(4)(a).
- 28 As to the meaning of 'writing' see PARA 7 note 2.
- 29 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(4)(b).
- 30 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(5)(a).
- 31 le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA  
258.
- 32 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 7(5)(b).

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## **252. Conditional inclusion.**

A primary care trust<sup>1</sup> may determine that, if a performer<sup>2</sup> is to be included in its performers list<sup>3</sup>, he is to be subject, while he remains included in that performers list, to the imposition of conditions, having regard to the statutory requirements<sup>4</sup> relating to preventing fraud or prejudice to the efficiency of the service<sup>5</sup>. If a performer fails to comply with a condition which has been imposed by the primary care trust, it may remove him from its performers list<sup>6</sup>.

Where the primary care trust is considering the removal of a performer from its performers list for breach of a condition, it must give him notice of any allegation against him<sup>7</sup> and of the grounds for the action it is considering<sup>8</sup>, and the opportunity to make written representations to it<sup>9</sup> or to put his case at an oral hearing before it<sup>10</sup>. The primary care trust must, within seven days of making its decision on the matter, notify the performer of that decision and the reasons for it (including any facts relied upon)<sup>11</sup>, and any right<sup>12</sup> of appeal<sup>13</sup>. The primary care trust must also notify the performer of his right<sup>14</sup> to have the decision reviewed<sup>15</sup>.

Where the primary care trust determines that a performer: (1) may be included in its performers list, but subject to conditions imposed under these provisions<sup>16</sup>; or (2) is to be subject to conditions while he remains included in its performers list<sup>17</sup>, his name may be included (or continue to be included) in its performers list during the period for bringing the appeal to the Family Health Services Appeal Authority<sup>18</sup>, or if an appeal is brought, until such time as that appeal has been decided, provided he agrees in writing to be bound by the conditions imposed until the time for appeal has expired or the appeal is decided<sup>19</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'performer' see PARA 249 note 7.

3 As to the meaning of 'performers list' see PARA 249 note 5.

4 I.e the requirements of the National Health Service Act 2006 s 91(5): see PARA 248.

5 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(2).

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(3)(a).

8 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(3)(b).

9 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(3)(c). As to the meaning of 'written' see PARA 7 note 2.

10 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(3)(d).

11 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(4)(a), (5)(a), (6)(a).

12 I.e under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258.

13 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(4)(b), (5)(b), (6)(b). When the primary care trust notifies the performer of any decision, it must inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it gave him the notice informing him of its decision and must tell him how to exercise any such right: reg 8(7).

14 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14: see PARA 257.

15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(8).

16 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(9)(a).

17 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(9)(b).

18 Ie pursuant to the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258. As to the Family Health Services Appeal Authority see PARA 443.

19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(9).

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**253. Requirements with which a performer in a performers list must comply.**

A performer<sup>1</sup>, who is included in a performers list<sup>2</sup> of a primary care trust<sup>3</sup>, must make a declaration to that trust in writing<sup>4</sup>, within seven days of its occurrence, if he:

- 153 (1) is convicted of any criminal offence in the United Kingdom<sup>5</sup>;
- 154 (2) is bound over following a criminal conviction in the United Kingdom<sup>6</sup>;
- 155 (3) accepts a police caution in the United Kingdom<sup>7</sup>;
- 156 (4) has accepted a conditional offer<sup>8</sup> or agreed to pay a penalty<sup>9</sup> as alternative to prosecution<sup>10</sup>;
- 157 (5) has, in proceedings in Scotland for an offence, been the subject of an order<sup>11</sup> discharging him absolutely<sup>12</sup>;
- 158 (6) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales<sup>13</sup>;
- 159 (7) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence<sup>14</sup>;
- 160 (8) is informed by any licensing, regulatory or other body<sup>15</sup> of the outcome of any investigation into his professional conduct, and there is a finding against him<sup>16</sup>;
- 161 (9) becomes the subject of any investigation into his professional conduct by any licensing, regulatory or other body<sup>17</sup>;
- 162 (10) becomes subject to an investigation into his professional conduct in respect of any current or previous employment<sup>18</sup>, or is informed of the outcome of any such investigation, where it is adverse<sup>19</sup>;
- 163 (11) becomes to his knowledge the subject of any investigation by the NHS Business Services Authority<sup>20</sup> in relation to fraud, or is informed of the outcome of such an investigation, where it is adverse<sup>21</sup>;
- 164 (12) becomes the subject of any investigation by another primary care trust or equivalent body, which might lead to his removal from any list or equivalent list<sup>22</sup>; or
- 165 (13) is removed, contingently removed or suspended from, refused admission to, or conditionally included in, any list or equivalent list<sup>23</sup>.

A performer, who is included in a performers list of a primary care trust, and is, was in the preceding six months<sup>24</sup>, or was at the time of the originating events a director<sup>25</sup> of a body corporate, must make a declaration to that trust in writing within seven days of the occurrence of certain specified events in relation to that body corporate<sup>26</sup>. A performer, who is included in a performers list of a primary care trust, must consent to a request being made by that trust to any employer<sup>27</sup> or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere for information relating to a current investigation or an investigation, where the outcome was adverse, by that employer or body into the performer or a body corporate<sup>28</sup>.

A performer, who is included in a performers list of a primary care trust, must supply it with an enhanced criminal record certificate<sup>29</sup> in relation to himself, if at any time, for reasonable cause, it requests him to provide such a certificate<sup>30</sup>. A performer, who is included in a relevant performers list<sup>31</sup> of a primary care trust, must act in accordance with the undertakings that a performer is required to provide when applying for inclusion in that relevant performers list<sup>32</sup>. A

performer, who is included in a performers list of a primary care trust, must<sup>33</sup> participate in the appraisal system provided by a primary care trust<sup>34</sup> and, if the appraisal is not conducted by the trust in whose list he is included, send that trust a copy of the statement summarising that appraisal<sup>35</sup>.

1 As to the meaning of 'performer' see PARA 249 note 7.

2 As to the meaning of 'performers list' see PARA 249 note 5.

3 As to primary care trusts see PARA 111.

4 The performer must give details, including approximate dates, and where any investigation or proceedings were or are to be brought, the nature of that investigation or those proceedings, and any outcome: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1). As to the meaning of 'writing' see PARA 7 note 2. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

5 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(a). As to the meaning of 'United Kingdom' see PARA 15 note 8.

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(b). As to binding over orders see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARAS 151, 152.

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(c). As to police cautions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1045.

8 Ie under the Criminal Procedure (Scotland) Act 1995 s 302 (fixed penalty: conditional offer by procurator fiscal).

9 Ie under the Social Security Administration Act 1992 s 115A: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 405.

10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(d) (reg 9(1)(d), (e) substituted by SI 2005/893).

11 Ie under the Criminal Procedure (Scotland) Act 1995 s 246(2) or (3).

12 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(e) (as substituted: see note 10).

13 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(f). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

14 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(g).

15 As to the meaning of 'licensing or regulatory body' see PARA 250 note 30.

16 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(h).

17 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(i).

18 'Employment' means any employment, whether paid or unpaid and whether under a contract for services or a contract of service and 'employed' and 'employer' must be construed accordingly: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 2(1). As to contracts of employment see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.

19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(j).

20 As to the NHS Business Services Authority see PARA 152.

21 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(k) (amended by SI 2006/635).

22 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(l). As to the meanings of 'equivalent body', 'list' and 'equivalent list' see PARA 250 note 30.



- 23 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(1)(m).
- 24 As to the meaning of 'month' see PARA 28 note 16.
- 25 As to the meanings of 'originating events' and 'director' see PARA 250 note 30.
- 26 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(2). As to the specified events see reg 9(2)(a)-(h). The performer must give the name and registered address of the body corporate and details, including approximate dates, of where any investigation or those proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome: reg 9(2).
- 27 For the purposes of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(3), 'employer' includes any partnership of which the performer is or was a member: reg 9(3).
- 28 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(3).
- 29 Ie under the Police Act 1997 s 115 (repealed). As to enhanced criminal record certificates see now the Police Act 1997 s 113B; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 713 et seq.
- 30 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(4).
- 31 As to the meaning of 'relevant performers list' see PARA 250 note 17.
- 32 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(6). Subject thereto, a performer, who is included in a performers list, must also comply with any undertaking he gave on admission to that list or to any previous list from which he has been transferred: see reg 9(5). As to applications for admission to a performers list see PARA 249. Regulation 9(6) does not apply in the case of an armed forces GP, but in such a case he must provide the primary care trust with a copy of his annual appraisal by the Ministry of Defence or the armed forces, as the case may be: reg 25. As to armed forces GPs see reg 21(1).
- 33 Ie except where the relevant Part provides to the contrary: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(7). As to the meaning of 'relevant Part' see PARA 249 note 2.
- 34 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(7)(a).
- 35 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 9(7)(b).

## **UPDATE**

### **253 Requirements with which a performer in a performers list must comply**

NOTE 32--SI 2004/585 reg 9(5) amended: SI 2008/1187.

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## **254. Removal from performers list.**

The primary care trust<sup>1</sup> must remove the performer<sup>2</sup> from its performers list<sup>3</sup> where it becomes aware that he: (1) has been convicted in the United Kingdom of murder<sup>4</sup>; (2) has been convicted in the United Kingdom of a criminal offence<sup>5</sup> and has been sentenced to a term of imprisonment of over six months<sup>6</sup>; (3) is subject to a national disqualification<sup>7</sup>; (4) has died<sup>8</sup>; or (5) is no longer a member of the relevant health care profession<sup>9</sup>.

Where a primary care trust is notified by the Family Health Services Appeal Authority<sup>10</sup> that it has considered an appeal<sup>11</sup> by a performer against: (a) a contingent removal by the trust and has decided to remove him instead<sup>12</sup>; or (b) a conditional inclusion, where he has been conditionally included in a performers list until the appeal has been decided, and has decided not to include him<sup>13</sup>, the trust must remove him from its performers list and notify him immediately that it has done so<sup>14</sup>.

The primary care trust may remove a performer from its performers list where any of the following conditions is satisfied<sup>15</sup>: (i) his continued inclusion in its performers list would be prejudicial to the efficiency of the services which those included in the relevant performers list<sup>16</sup> perform (known as an 'efficiency case')<sup>17</sup>; (ii) he is involved in a fraud case<sup>18</sup> in relation to any health scheme<sup>19</sup>; or (iii) he is unsuitable to be included in that performers list (known as an 'unsuitability case')<sup>20</sup>. Where the performer cannot demonstrate that he has performed the services, which those included in the relevant performers list perform, within the area of the primary care trust during the preceding 12 months<sup>21</sup>, it may remove him from its performers list<sup>22</sup>.

Where a primary care trust is considering removing a performer from its performers list<sup>23</sup> or contingently removing a performer<sup>24</sup>, it must give him notice of any allegation against him<sup>25</sup>, of what action it is considering and on what grounds<sup>26</sup>; and the opportunity to make written representations to it<sup>27</sup> and to put his case at an oral hearing before it, if he so requests<sup>28</sup>. The primary care trust must notify the performer of its decision and the reasons for it (including any facts relied upon)<sup>29</sup>, and any right<sup>30</sup> of appeal<sup>31</sup>. The primary care trust must also notify the performer of his right<sup>32</sup> to have the decision reviewed<sup>33</sup>.

Where the primary care trust decides to remove a performer<sup>34</sup>, he must not be removed from its performers list, until a period of 28 days starting with the day on which it reaches its decision<sup>35</sup>, or any appeal is disposed of by the Family Health Services Appeal Authority<sup>36</sup>, whichever is the later<sup>37</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'performer' see PARA 249 note 7.

3 As to the meaning of 'performers list' see PARA 249 note 5.

4 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(1)(a). As to the meaning of 'United Kingdom' see PARA 15 note 8. As to murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 89. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

5 ie an offence committed on or after the day prescribed in the relevant Part. As to the meaning of 'relevant Part' see PARA 249 note 2. The day prescribed in the National Health Service (Performers Lists) Regulations

2004, SI 2004/585, Pt 2 (regs 21-27) (see PARA 263 et seq) in respect of a medical performers list is 3 November 2003 or, if that medical practitioner had been included in a medical list or a supplementary list, 14 December 2001: reg 26(3). The day prescribed in Pt 3 (regs 28-33) (see PARA 284 et seq) in respect of a dental performers list is 3 March 2003 or, if that dentist had been included in a dental list, 14 December 2001: reg 32(3) (added by SI 2005/3491). As to the meaning of 'medical performers list' see PARA 249 note 3. As to the meaning of 'medical practitioner' see PARA 84 note 7. As to the meaning of 'dental performers list' see PARA 249 note 4. As to the meaning of 'dentist' see PARA 284 note 1.

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(1)(b).

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(1)(c). As to the meaning of 'national disqualification' see PARA 250 note 24.

8 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(1)(d).

9 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(1)(e). As to the relevant health care professions see PARA 248 note 2.

10 As to the Family Health Services Appeal Authority see PARA 443.

11 As to appeals see PARA 258.

12 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(2)(a). As to contingent removal see PARA 255.

13 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(2)(b). As to conditional inclusion see PARA 252.

14 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(2).

15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(3).

16 As to the meaning of 'relevant performers list' see PARA 250 note 17.

17 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(4)(a). As to the criteria for a decision on removal under reg 10(4)(a) see reg 11(5), (6). As to the power of the primary care trust to contingently remove a performer from the list in such a case see PARA 255.

18 'Fraud case' means a case where a person satisfies the second condition for removal from the performers list, set out in the National Health Service Act 1977 s 49F(3) (repealed) (see now the National Health Service Act 2006 s 151(3); and PARA 388) or, by virtue of the National Health Service Act 1977 s 49H (repealed) (see now the National Health Service Act 2006 s 153; and PARA 388), is treated as doing so: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 2(1).

19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(4)(b). As to the criteria for a decision on removal under reg 10(4)(b) see reg 11(3), (4). As to the power of the primary care trust to contingently remove a performer from the list in such a case see PARA 255. For the purposes of reg 10(4)(b), in addition to the services covered by the definition of 'health scheme' in the National Health Service Act 1977 s 49F(8) (repealed) (see now the National Health Service Act 2006 s 151(7); and PARA 388), the following are also health schemes: health services, including medical and surgical treatment, provided by the armed forces; services provided by port health authorities constituted under the Public Health (Control of Disease) Act 1984 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102); medical services provided to a prisoner in the care of the medical officer or other such officer of a prison appointed for the purposes of the Prison Act 1952 s 7 (see **PRISONS** vol 36(2) (Reissue) PARA 515); and publicly-funded health services provided by or on behalf of any organisation anywhere in the world: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(5).

20 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(4)(c). As to the criteria for a decision on removal under reg 10(4)(c) see reg 11(1), (2).

21 Subject to any provision in the relevant Part (see PARAS 265, 286), in calculating the period of 12 months, the primary care trust must disregard any period during which: (1) the performer was suspended under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585 (reg 10(7)(a)); or (2) he was performing whole time service in the armed forces in a national emergency (as a volunteer or otherwise), compulsory whole-time service in the armed forces (including service resulting from reserve liability), or any equivalent service, if liable for compulsory whole-time service in the armed forces (reg 10(7)(b)). As to suspension from a performers list see PARA 256. 'Armed forces' means the United Kingdom Armed Forces of Her Majesty: reg 2(1). As to the armed forces see **ARMED FORCES**.

22 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(6). This provision does not apply in the case of an armed forces GP: reg 26(4). As to armed forces GPs see reg 21(1).

23 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(3)-(6) (see the text to notes 15-22), or reg 8(2) (see PARA 252), reg 12(3)(c) (see PARA 255) or reg 15(6)(b) (see PARA 258).

24 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12(1): see PARA 255.

25 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(8)(a).

26 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(8)(b).

27 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(8)(c). As to the meaning of 'written' see PARA 7 note 2.

28 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(8)(d). As to the conduct of an oral hearing see *R (on the application of Dr S) v Knowsley NHS Primary Care Trust*; *R (on the application of Ghosh) v Northumberland NHS Care Trust* [2006] EWHC 26 (Admin), (2006) Times, 2 February, [2006] All ER (D) 111 (Jan).

29 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(9)(a), (10)(a), (11)(a).

30 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258.

31 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(9)(b), (10)(b), (11)(b). When the primary care trust notifies the performer of any decision, it must inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it informed him of its decision and it must tell him how to exercise any such right: reg 10(12).

32 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14: see PARA 257.

33 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(13).

34 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(3)-(6): see the text to notes 15-22.

35 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(14)(a).

36 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(14)(b).

37 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(14).

## UPDATE

### 254 Removal from performers list

NOTE 18--National Health Service Act 1977 s 49H amended: Health Act 2006 Sch 8 para 19.

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## 255. Contingent removal.

In an efficiency case or a fraud case<sup>1</sup> the primary care trust<sup>2</sup> may, instead of deciding to remove a performer<sup>3</sup> from its performers list<sup>4</sup>, decide to remove him contingently<sup>5</sup>. If it so decides, it must impose such conditions as it may decide on his inclusion in its performers list with a view to: (1) in an efficiency case, removing any prejudice to the efficiency of the services in question<sup>6</sup>; or (2) in a fraud case, preventing further acts or omissions<sup>7</sup>.

If the primary care trust determines that the performer has failed to comply with a condition, it may decide to: (a) vary the conditions imposed<sup>8</sup>; (b) impose new conditions<sup>9</sup>; or (c) remove him from its performers list<sup>10</sup>.

1 As to efficiency cases and fraud cases see PARA 254.

2 As to primary care trusts see PARA 111.

3 As to the meaning of 'performer' see PARA 249 note 7.

4 As to the meaning of 'performers list' see PARA 249 note 5.

5 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12(1). As to the notice which the trust must give to the performer in such a case see reg 10(8); and PARA 254. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12(2)(a).

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12(2)(b).

8 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12(3)(a).

9 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12(3)(b).

10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12(3)(c). As to the notice which the trust must give to the performer in such a case see reg 10(8); and PARA 254.

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## **256. Suspension.**

If a primary care trust<sup>1</sup> is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend<sup>2</sup> a performer<sup>3</sup> from its performers list<sup>4</sup>: (1) while it decides whether or not to exercise its powers to remove him<sup>5</sup> or contingently remove him<sup>6</sup>; (2) while it waits for a decision affecting him of a court anywhere in the world or of a licensing or regulatory body<sup>7</sup>; (3) where it has decided to remove him, but before that decision takes effect<sup>8</sup>; or (4) pending appeal<sup>9</sup>.

Where a primary care trust is considering suspending a performer or varying the period of suspension, it must give him notice of any allegation against him<sup>10</sup>, notice of what action it is considering and on what grounds<sup>11</sup>, and the opportunity to put his case at an oral hearing before it, on a specified day, provided that at least 24 hours notice of the hearing is given<sup>12</sup>. If the performer does not wish to have an oral hearing or does not attend the oral hearing, the primary care trust may suspend the performer with immediate effect<sup>13</sup>. If an oral hearing does take place, the primary care trust must take into account any representations made before it reaches its decision<sup>14</sup>; and the primary care trust may suspend the performer with immediate effect following the hearing<sup>15</sup>. The primary care trust must notify the performer of its decision and the reasons for it (including any facts relied upon) within seven days of making that decision<sup>16</sup>; and must notify the performer of any right<sup>17</sup> of review<sup>18</sup>.

The effect of a suspension is that, while a performer is suspended, he is to be treated as not being included in the primary care trust's performers list, even though his name appears in it<sup>19</sup>. The primary care trust may at any time revoke the suspension and notify the performer of its decision<sup>20</sup>. During a period of suspension payments may be made to or in respect of the performer in accordance with a determination by the Secretary of State<sup>21</sup>. If a performer is dissatisfied with a decision of a primary care trust: (a) to refuse to make a payment to or in respect of him pursuant to such a determination<sup>22</sup>; (b) to make a payment to or in respect of him pursuant to such a determination, but at a lower level than the level to which he considers to be correct<sup>23</sup>; or (c) in respect of recovery of what the primary care trust considers to be an overpayment<sup>24</sup>, he may ask the trust to review the original decision and, if he does so, it must reconsider that decision, and once it has done so, it must notify the performer in writing<sup>25</sup> of the decision that is the outcome of its reconsideration of its original decision and give him notice of the reasons for its reconsidered decision<sup>26</sup>. If the performer remains dissatisfied (whether on the same or different grounds), he may appeal to the Secretary of State<sup>27</sup>.

1 As to primary care trusts see PARA 111.

2 Ie in accordance with the provisions of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13.

3 As to the meaning of 'performer' see PARA 249 note 7.

4 As to the meaning of 'performers list' see PARA 249 note 5.

5 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10: see PARA 254.

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(1)(a). As to contingent removal see reg 12; and PARA 255. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1. Subject to reg 13(8), in a case falling within reg 13(1)(a),

the primary care trust must specify a period, not exceeding six months, as the period of suspension: reg 13(2). The primary care trust may extend the period of suspension under reg 13(2) so long as the aggregate does not exceed six months: reg 13(8). The period of suspension under reg 13(1)(a) or (b) (see the text to note 7) may extend beyond six months if: (1) on the application of the primary care trust, the Family Health Services Appeal Authority so orders (reg 13(4)(a)); or (2) the primary care trust applied under head (1) before the expiry of the period of suspension, but the Family Health Services Appeal Authority has not made an order by the time it expires, in which case it continues until the authority makes an order (reg 13(4)(b)). If the Family Health Services Appeal Authority does so order, it must specify: (a) the date on which the period of suspension is to end (reg 13(5)(a)); (b) an event beyond which it is not to continue (reg 13(5)(b)); or (c) both a date on which it is to end and an event beyond which it is not to continue, in which case it ends on the earlier of that date or that event, as the case may be (reg 13(5)(c)). The Family Health Services Appeal Authority may, on the application of the primary care trust, make a further order (complying with reg 13(5)) at any time while the period of suspension pursuant to the earlier order is still continuing: reg 13(6). As to the Family Health Services Appeal Authority see PARA 443. As to the meaning of 'month' see PARA 28 note 16.

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(1)(b). As to the meaning of 'licensing or regulatory body' see PARA 250 note 30. Subject to reg 13(8), in a case falling within reg 13(1)(b), the primary care trust may specify that the performer remains suspended after the decision referred to in reg 13(1)(b) has been made for an additional period, not exceeding six months: reg 13(3). The primary care trust may impose a further period of suspension under reg 13(3), so long as the aggregate does not exceed six months: reg 13(8). See also note 6.

8 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(1)(c). If the primary care trust suspends a performer in a case falling within reg 13(1)(c) or (d) (see the text to note 9), the suspension has effect from the date the primary care trust informed him of the suspension until: (1) the expiry of any appeal period (reg 13(7)(a)); or (2) if he appeals under reg 15 (see PARA 258), the Family Health Services Appeal Authority has disposed of the appeal (reg 13(7)(b)).

9 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(1)(d). See also note 8. As to appeals see PARA 258.

10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(11)(a).

11 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(11)(b).

12 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(11)(c).

13 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(12).

14 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(13).

15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(14).

16 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(15).

17 le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14: see PARA 257.

18 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(16).

19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(9) (reg 13(9) amended, (9A) added, by SI 2006/1385). However, for the purpose of an application by a performer who is suspended to be included in another performers list, he must be treated as still included in the list from which he is suspended, notwithstanding that suspension: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(9A) (as so added).

20 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(10).

21 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(17). If a payment is made pursuant to such a determination, but the payee was not entitled to receive all or any part thereof, if the amount to which he was not entitled has not been recovered by other means, it may be recovered as a civil debt: reg 13(18). As to the Secretary of State see PARA 6 note 8. As to the summary recovery of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

22 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(19)(a).

23 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(19)(b).

24 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(19)(c).

25 As to the meaning of 'writing' see PARA 7 note 2.

26 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(19).

27 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(20). An appeal is made by the performer giving to the Secretary of State a notice of appeal within a period of 28 days beginning on the day that the primary care trust notified him of the reconsidered decision: reg 13(20). As to content of a notice of appeal see reg 13(21). As to the consideration of an appeal by the Secretary of State see reg 13(22)-(24).



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## **257. Reviews.**

A primary care trust<sup>1</sup> may and, if requested in writing<sup>2</sup> to do so by the performer<sup>3</sup>, must review its decision to: (1) impose or vary conditions<sup>4</sup> in relation to the performer's inclusion in its performers list<sup>5</sup>; (2) impose or vary conditions<sup>6</sup> in relation to the performer's contingent removal from its performers list<sup>7</sup>; or (3) suspend him<sup>8</sup> from its performers list<sup>9</sup>.

If a primary care trust decides to review its decision to conditionally include, contingently remove or suspend a performer, it must give him notice of any allegation against him<sup>10</sup>, notice of what action it is considering and on what grounds<sup>11</sup>, the opportunity to make written representations to it<sup>12</sup>, and the opportunity to put his case at an oral hearing before it<sup>13</sup>. If there are no representations<sup>14</sup>, the primary care trust must notify the performer of its decision, the reasons for it (including any facts relied upon) and of any right<sup>15</sup> of appeal<sup>16</sup>. If there are representations, the primary care trust must take them into account before reaching its decision<sup>17</sup>.

If a primary care trust decides to review its decision to impose conditions in relation to the performer's inclusion in its performers list, it may vary the conditions, impose different conditions, remove the conditions or remove the performer from its performers list<sup>18</sup>. If a primary care trust decides to review its decision to impose a contingent removal, it may vary the conditions, impose different conditions, or remove the performer from its performers list<sup>19</sup>. If a primary care trust decides to review its decision to suspend a performer, it may decide to impose conditions or remove him from its performers list<sup>20</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'writing' see PARA 7 note 2.

3 A performer may not request a review of a primary care trust's decision until the expiry of a three month period beginning with the date of that decision or, in the case of a conditional inclusion under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8 (see PARA 252), beginning with the date it includes his name in its performers list: reg 14(2). After a review has taken place, the performer cannot request a further review before the expiry of six months from the date of the decision on the last review: reg 14(3). As to the meaning of 'performer' see PARA 249 note 7. As to the meaning of 'performers list' see PARA 249 note 5. As to the meaning of 'month' see PARA 28 note 16. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

4 I.e conditions imposed under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8: see PARA 252.

5 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(1)(a).

6 I.e conditions imposed under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12: see PARA 255.

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(1)(b).

8 I.e under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(1)(a) or (b) (see PARA 256) except where a suspension is continuing by order of the Family Health Services Appeal Authority: reg 14(1)(c). A primary care trust may not review its decision to suspend a performer under reg 13(1)(c) or (d) (see PARA 256): reg 14(11).

9 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(1)(c).

- 10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(4)(a).
- 11 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(4)(b).
- 12 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(4)(c). Such representations must be made within 28 days of the date of the notification under reg 14(4)(b) (see the text to note 11): reg 14(4)(c).
- 13 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(4)(d). A request for such a hearing must be made within the 28 day period mentioned in reg 14(4)(c) (see note 12): reg 14(4)(d).
- 14 Ie within the period specified in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(4)(c): see note 12.
- 15 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258.
- 16 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(5).
- 17 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(6). The primary care trust must, within seven days of making its decision, notify the performer of: (1) that decision (reg 14(7)(a)); (2) the reasons for it (including any facts relied upon) (reg 14(7)(b)); (3) any right of appeal under reg 15 (see PARA 258) (reg 14(7)(c)); and (4) the right to a further review under reg 14 (reg 14(7)(d)). When the primary care trust notifies the performer under reg 14(7)(c), it must notify him that if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it gave him the notice informing him of its decision, and tell him how to exercise any such right: reg 14(7A) (added by SI 2005/3491).
- 18 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(8).
- 19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(9).
- 20 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14(10).

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## 258. Appeals.

A performer<sup>1</sup> may appeal (by way of redetermination) to the Family Health Services Appeal Authority<sup>2</sup> against the following decisions of a primary care trust<sup>3</sup> by giving notice to the authority<sup>4</sup>. The primary care trust decisions in question are decisions:

- 166 (1) to refuse<sup>5</sup> admission to its performers list<sup>6</sup>;
- 167 (2) to impose a particular condition on a performer's inclusion in its performers list<sup>7</sup>, or to vary any such condition or to impose a different condition<sup>8</sup>;
- 168 (3) on a review<sup>9</sup> of a conditional inclusion<sup>10</sup> in its performers list<sup>11</sup>;
- 169 (4) to remove the performer<sup>12</sup> from its performers list<sup>13</sup>;
- 170 (5) to impose a particular condition in relation to the performer's contingent removal from its performers list<sup>14</sup>, or to vary any such condition or to impose a different such condition<sup>15</sup>;
- 171 (6) on a review<sup>16</sup> of a contingent removal<sup>17</sup>; and
- 172 (7) which is prescribed<sup>18</sup> that the performer may appeal to the Family Health Services Appeal Authority<sup>19</sup>.

On appeal the Family Health Services Appeal Authority may make any decision which the primary care trust could have made<sup>20</sup>. Where the decision of the authority on appeal is that the appellant's inclusion in a performers list is to be subject to conditions, whether or not those conditions are identical with the conditions imposed by the primary care trust, the trust must ask him to notify it within 28 days of the decision (or such longer period as the trust may agree) whether he wishes to be included in its performers list subject to those conditions<sup>21</sup>. If the performer notifies the primary care trust that he does wish to be included in its performers list subject to the conditions, it must so include him<sup>22</sup>.

Where the Family Health Services Appeal Authority on appeal decides to impose a contingent removal the primary care trust and the performer may each apply to the authority for the conditions imposed on the performer to be varied, for different conditions to be imposed, or for the contingent removal to be revoked<sup>23</sup>; and the primary care trust may remove the performer from its performers list if it determines that he has failed to comply with any such condition<sup>24</sup>.

1 As to the meaning of 'performer' see PARA 249 note 7.

2 As to the Family Health Services Appeal Authority see PARA 443.

3 As to primary care trusts see PARA 111.

4 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(1). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

5 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1): see PARA 250.

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(2)(a). As to the meaning of 'performers list' see PARA 249 note 5.

7 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8: see PARA 252.

8 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(2)(b).

- 9     le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14: see PARA 257.
- 10    le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8: see PARA 252.
- 11    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(2)(c).
- 12    le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8(2) (see PARA 252), reg 10(3) or (6) (see PARA 254), reg 12(3)(c) (see PARA 255) or reg 15(6)(b) (see the text to note 24).
- 13    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(2)(d).
- 14    le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12: see PARA 255.
- 15    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(2)(e).
- 16    le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 14 (see PARA 257) of a contingent removal under reg 12 (see PARA 255).
- 17    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(2)(f).
- 18    le by the relevant Part. As to the meaning of 'relevant Part' see PARA 249 note 2.
- 19    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(2)(g).
- 20    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(3). As to the power of the Family Health Services Appeal Authority to impose a national disqualification see reg 18A; and PARA 261.
- 21    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(4).
- 22    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(5).
- 23    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(6)(a).
- 24    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15(6)(b).

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## **259. Notification of decisions.**

Where a primary care trust<sup>1</sup> decides to:

- 173 (1) refuse<sup>2</sup> to admit a performer<sup>3</sup> to its performers list<sup>4</sup>;
- 174 (2) impose conditions<sup>5</sup> on his inclusion in that list<sup>6</sup>;
- 175 (3) remove him<sup>7</sup> from that list<sup>8</sup>;
- 176 (4) remove him<sup>9</sup> from that list contingently<sup>10</sup>; or
- 177 (5) suspend him<sup>11</sup> from that list<sup>12</sup>,

it must notify the specified persons<sup>13</sup> or bodies<sup>14</sup> and must additionally notify certain other persons or bodies<sup>15</sup>, if requested to do so by those persons or bodies in writing<sup>16</sup> (including electronically), of the prescribed matters<sup>17</sup>. The primary care trust must send to the performer concerned a copy of any information about him provided to those persons or bodies, and any correspondence with that person or body relating to that information<sup>18</sup>. Where a decision is changed on review or appeal, or a suspension lapses, the primary care trust must notify the persons or bodies that were notified of the original decision of the later decision or the fact that that suspension has lapsed<sup>19</sup>.

1 As to primary care trusts see PARA 111.

2 I.e. on the grounds specified in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6 (see PARA 250), reg 24(1) (see PARA 264) or reg 31(1) (see PARA 285).

3 As to the meaning of 'performer' see PARA 249 note 7.

4 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(1)(a) (amended by SI 2005/3491). As to the meaning of 'performers list' see PARA 249 note 5. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

5 I.e. under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 8: see PARA 252.

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(1)(b).

7 I.e. under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10: see PARA 254.

8 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(1)(c).

9 I.e. under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12: see PARA 255.

10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(1)(d).

11 I.e. under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13: see PARA 256.

12 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(1)(e).

13 As to the meaning of 'person' see PARA 17 note 2.

14 A primary care trust must notify within seven days of that decision: (1) the Secretary of State (National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(2)(a)); (2) any other primary care trust

or equivalent body that, to the knowledge of the notifying trust, has the performer on any list or equivalent list, is considering an application for inclusion in any list or equivalent list by him, or in whose area he performs services (reg 16(2)(b)); (3) the Scottish Executive (reg 16(2)(c)); (4) the Welsh Ministers (reg 16(2)(d)); Government of Wales Act 2006 Sch 11 para 32; (5) the Northern Ireland Executive (National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(2)(e)); (6) the relevant body or any other appropriate regulatory body (reg 16(2)(f)); (7) the National Patient Safety Agency (reg 16(2)(g) (amended by SI 2005/502)); and (8) where it is a fraud case, the NHS Business Services Authority (National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(2)(h) (amended by SI 2006/635)). As to the Secretary of State see PARA 6 note 8. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the meanings of 'list' and 'equivalent list' see PARA 250 note 30. 'Relevant body' means the body for the time being mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294), which regulates the profession of the performer: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 2(1). As to fraud cases see PARA 254. As to the Scottish Executive and the Northern Ireland Executive see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the National Patient Safety Agency see PARA 150. As to the NHS Business Services Authority see PARA 152.

15 The other persons or bodies to be additionally notified are: (1) persons or bodies that can establish that they are or were employing the performer, are using or have used his services or are or were considering employing him or using his services in a professional capacity (National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(3)(a)); and (2) a partnership which provides primary services and can establish that the performer is or was a member of the partnership or that it is considering inviting the performer to become such a member (reg 16(3)(b)). As to the meaning of 'employ' see PARA 253 note 18.

16 As to the meaning of 'writing' see PARA 7 note 2.

17 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(1). The prescribed matters are: (1) the performer's name, address and date of birth (reg 16(4)(a)); (2) his professional registration number (reg 16(4)(b)); (3) the date and a copy of the primary care trust's decision (reg 16(4)(c)); and (4) a contact name of a person in the trust for further inquiries (reg 16(4)(d)). Where the primary care trust has notified any of the persons or bodies specified in reg 16(2) or (3) (see notes 14, 15) of those matters, it may, in addition, if requested by that person or body, notify that person or body of any evidence that was considered, including any representations from the performer: reg 16(6). Where a primary care trust is notified by the Family Health Services Appeal Authority that it has imposed a national disqualification on a performer who was, or had applied to be included, in its performers list, it must notify the persons or bodies listed in reg 16(2)(b), (g) and (h) and reg 16(3): reg 16(7). As to the meaning of 'national disqualification' see PARA 250 note 24. As to the Family Health Services Appeal Authority see PARA 443.

18 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(5).

19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 16(8). As to reviews see PARA 257. As to appeals see PARA 258.

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## **260. Amendment of or withdrawal from performers lists.**

A performer<sup>1</sup> must, unless it is impracticable for him to do so, give notice to the primary care trust<sup>2</sup> within 28 days of any occurrence requiring a change in the information recorded about him in its performers list<sup>3</sup> and of any change of his private address<sup>4</sup>. Where a performer intends to withdraw from a performers list, unless it is impracticable for him to do so, he must so notify the primary care trust at least three months<sup>5</sup> in advance of that date<sup>6</sup>. A performer may withdraw any such notice<sup>7</sup> at any time before the primary care trust removes his name from its performers list<sup>8</sup>.

A performer must notify the primary care trust that he intends to withdraw from its relevant performers list<sup>9</sup> if he is accepted on to any relevant performers list of another primary care trust<sup>10</sup>. Such a notice may not be withdrawn once the performer has been accepted on that other list<sup>11</sup>.

Where a primary care trust is investigating a performer: (1) for the purpose of deciding whether or not to exercise its powers to remove him<sup>12</sup> or contingently remove<sup>13</sup> him<sup>14</sup>; or (2) who has<sup>15</sup> been suspended<sup>16</sup>, he may not withdraw from any list<sup>17</sup> kept by any primary care trust in which he is included, except where the Secretary of State<sup>18</sup> has given his consent, until the matter has been finally determined by the trust<sup>19</sup>. Where a primary care trust has decided to remove a performer from its performers list<sup>20</sup> or to contingently remove him from it<sup>21</sup>, but has not yet given effect to its decision, he may not withdraw from any list kept by any primary care trust in which he is included, except where the Secretary of State has given his consent<sup>22</sup>. Where a primary care trust has suspended a performer<sup>23</sup>, he may not withdraw from any list kept by any primary care trust in which he is included, except where the Secretary of State has given his consent, until the decision of the relevant court or body<sup>24</sup> is known and the matter has been considered and finally determined by the trust<sup>25</sup>.

1 As to the meaning of 'performer' see PARA 249 note 7.

2 As to primary care trusts see PARA 111.

3 As to the meaning of 'performers list' see PARA 249 note 5.

4 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 17(1). The primary care trust must on receiving such notice from any performer, amend its performers list as soon as possible: reg 17(4)(a). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

5 As to the meaning of 'month' see PARA 28 note 16.

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 17(2). The primary care trust must on receiving such notice from any performer, so amend its performers list, either on the date notified by him, provided it falls at least three months after the date of the notice (reg 17(4)(b)(i)), or on the date from which it has agreed that the withdrawal is to take effect (reg 17(4)(b)(ii)), whichever is the earlier (reg 17(4)(b)).

7 I.e a notice given pursuant to the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 17(1) or (2): see the text to notes 1-6.

8 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 17(5).

9 As to the meaning of 'relevant performers list' see PARA 250 note 17.

- 10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 17(3). The primary care trust must on receiving such notice from any performer, remove his name from its performers list as soon as it confirms that he has been accepted on that other list: reg 17(4)(c).
- 11 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 17(6).
- 12 *Ie* under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10: see PARA 254.
- 13 *Ie* under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12: see PARA 255.
- 14 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18(1)(a).
- 15 *Ie* under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(1)(a): see PARA 256.
- 16 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18(1)(b).
- 17 As to the meaning of 'list' see PARA 250 note 30.
- 18 As to the Secretary of State see PARA 6 note 8.
- 19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18(1).
- 20 *Ie* under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(3)-(6): see PARA 254.
- 21 *Ie* under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 12: see PARA 255.
- 22 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18(2).
- 23 *Ie* under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 13(1)(b): see PARA 256.
- 24 As to the meaning of 'relevant body' see PARA 259 note 14.
- 25 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18(3).



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## **261. National disqualification.**

If a performer<sup>1</sup> appeals to the Family Health Services Appeal Authority<sup>2</sup> and the authority decides to remove the appellant from a performers list<sup>3</sup>, or to refuse to admit him to a performers list<sup>4</sup>, the authority may also impose a national disqualification<sup>5</sup> on that performer<sup>6</sup>. A primary care trust which has removed a performer from its performers list<sup>7</sup>, or refused to include him in its performers list<sup>8</sup>, may apply to the Family Health Services Appeal Authority for a national disqualification to be imposed on him<sup>9</sup>.

If the Family Health Services Appeal Authority imposes a national disqualification on a person no primary care trust may include him in any list from which he has been so disqualified<sup>10</sup>; and if he is included in any such list, a primary care trust must remove him from that list forthwith<sup>11</sup>. The Family Health Services Appeal Authority may, at the request of a person upon whom it has imposed a national disqualification, review that disqualification<sup>12</sup>; and on such a review, the authority may confirm or revoke that disqualification<sup>13</sup>.

<sup>1</sup> As to the meaning of 'performer' see PARA 249 note 7.

<sup>2</sup> See under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258. As to the Family Health Services Appeal Authority see PARA 443.

<sup>3</sup> National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(2)(a) (reg 18A added, reg 19 amended, by SI 2005/3491). As to the meaning of 'performers list' see PARA 249 note 5. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

<sup>4</sup> National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(2)(b) (as added: see note 3).

<sup>5</sup> 'National disqualification' means the disqualification of the performer from inclusion in: (1) a performer's list (National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(1)(a) (as added: see note 3)); (2) a list referred to in the National Health Service Act 1977 s 49N(1) (repealed) (see now the National Health Service Act 2006 s 159; and PARA 402) prepared by a primary care trust (National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(1)(b) (as so added)); (3) a supplementary list prepared by a primary care trust under the National Health Service (General Medical Services Supplementary List) Regulations 2001, SI 2001/3740, reg 3 (revoked) (National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(1)(c) (as so added)); (4) a list of pharmacists performing local pharmaceutical services prepared by a primary care trust (reg 18A(1)(d) (as so added)); or only from inclusion in one or more descriptions of such list prepared by a primary care trust or an equivalent list, the description being that specified by the Family Health Services Appeal Authority in its decision (reg 18A(1) (as so added)). As to primary care trusts see PARA 111. As to the meaning of 'equivalent list' see PARA 250 note 30. As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

<sup>6</sup> National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(2) (as added: see note 3).

<sup>7</sup> National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(3)(a) (as added: see note 3). As to removal from performers lists see PARA 254.

<sup>8</sup> National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(3)(b) (as added: see note 3). As to decisions and grounds for refusal see PARA 250.

<sup>9</sup> National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(3) (as added: see note 3). Any such application must be made before the end of the period of three months beginning with the date of

the removal or the refusal, or 1 April 2006, whichever is the later: reg 18A(4) (as so added). As to the meaning of 'month' see PARA 28 note 16.

10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(5)(a) (as added: see note 3).

11 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(5)(b) (as added: see note 3).

12 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(6) (as added: see note 3). Subject to reg 19, such a request may not be made before the end of the period of: (1) two years beginning with the date on which the national disqualification was imposed (reg 18A(8)(a) (as so added)); or (2) one year beginning with the date of the Family Health Services Appeal Authority's decision on the last such review (reg 18A(8)(b) (as so added)). The period for review is the different period specified in heads (a) to (d), instead of that in reg 18A(8), where the circumstances are that:

- 26 (a) on making a decision to impose a national disqualification, the Family Health Services Appeal Authority states that it is of the opinion that the criminal or professional conduct of the performer is such that there is no realistic prospect of a further review being successful, if held within the period specified in reg 18A(8)(a), in which case the reference to 'two years' in that provision is a reference to five years (reg 19(a) (as amended: see note 3));
- 27 (b) on the last review by the Family Health Services Appeal Authority of a national disqualification the performer was unsuccessful and the authority states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review, in which case the reference to 'one year' in reg 18A(8)(b) is a reference to three years (reg 19(b) (as so amended));
- 28 (c) the Family Health Services Appeal Authority states that it is of the opinion that, because a criminal conviction considered by the authority in reaching the decision that has effect has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to 'two years' or 'one year' in reg 18A(8) is a reference to the period that has already elapsed (reg 19(c) (as so amended)); or
- 29 (d) the Family Health Services Appeal Authority is of the opinion that because the decision of a licensing, regulatory or other body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to 'two years' or 'one year' in reg 18A(8) is a reference to the period that has already elapsed (reg 19(d) (as so amended)). As to the meaning of 'licensing or regulatory body' see PARA 250 note 30.

13 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 18A(7) (as added: see note 3).

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## **262. Disclosure of information.**

The primary care trust<sup>1</sup> must disclose to the Secretary of State<sup>2</sup> information supplied to it or acquired by it<sup>3</sup> as he may from time to time request<sup>4</sup>.

The primary care trust may disclose information about a performer<sup>5</sup> supplied to it or acquired by it<sup>6</sup> to any of the following: (1) the Secretary of State<sup>7</sup>; (2) any other primary care trust or equivalent body<sup>8</sup> which has him on any of its lists<sup>9</sup>, which is considering an application from him for inclusion on any of its lists<sup>10</sup>, or in whose area he performs the services in question<sup>11</sup>; (3) the Scottish Executive<sup>12</sup>, the Welsh Ministers<sup>13</sup> or the Northern Ireland Executive<sup>14</sup>; (4) the National Patient Safety Agency<sup>15</sup>; (5) the relevant body<sup>16</sup> or any other licensing or regulatory body<sup>17</sup>; (6) any organisation or employer<sup>18</sup> that, to the knowledge of the primary care trust, is employing him, using his services or considering employing him or using his services in a professional capacity<sup>19</sup>; (7) any partnership, which provides primary services, of which, to the knowledge of the primary care trust, the performer is a member or that is considering inviting the performer to become a member<sup>20</sup>; and (8) where an allegation of fraud is being considered, the NHS Business Services Authority<sup>21</sup>.

1 As to primary care trusts see PARA 111.

2 As to the Secretary of State see PARA 6 note 8.

3 Ie pursuant to the National Health Service (Performers Lists) Regulations 2004, SI 2004/585.

4 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(2). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

5 As to the meaning of 'performer' see PARA 249 note 7.

6 Ie pursuant to the National Health Service (Performers Lists) Regulations 2004, SI 2004/585.

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(a).

8 As to the meaning of 'equivalent body' see PARA 250 note 30.

9 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(b)(i). As to the meaning of 'list' see PARA 250 note 30.

10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(b)(ii).

11 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(b)(iii).

12 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(c). As to the Scottish Executive see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

13 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(d); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

14 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(e). As to the Northern Ireland Executive see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(f) (amended by SI 2005/502). As to National Patient Safety Agency see PARA 150.

- 16 As to the meaning of 'relevant body' see PARA 259 note 14.
- 17 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(g). As to the meaning of 'licensing or regulatory body' see PARA 250 note 30.
- 18 As to the meaning of 'employer' and 'employ' see PARA 253 note 18.
- 19 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(h).
- 20 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(i).
- 21 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 20(1)(j) (amended by SI 2006/635). As to the NHS Business Services Authority see PARA 152.

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## (C) MEDICAL PERFORMERS LISTS

### 263. Medical performers list.

A medical practitioner<sup>1</sup> may not perform any primary medical services<sup>2</sup>, unless he is a general medical practitioner<sup>3</sup> and his name is included in a medical performers list<sup>4</sup>. However, a medical practitioner who is provisionally registered<sup>5</sup> may perform primary medical services when his name is not included in a medical performers list, but only whilst acting in the course of his employment in a resident medical capacity in an approved medical practice<sup>6</sup>; and a GP registrar, who has applied<sup>7</sup> to a primary care trust<sup>8</sup> to have his name included in its medical performers list, may perform primary medical services despite not being included in that list, until the first of the following events arises, either the trust notifies him of its decision on that application<sup>9</sup>, or the end of a period of two months<sup>10</sup> starting with the date on which his vocational training scheme begins<sup>11</sup>.

Certain medical practitioners<sup>12</sup> may perform primary medical services in the area of a primary care trust, but only in so far as the performance of those services constitutes part of a programme of post-registration supervised clinical practice (known as a 'post-registration programme') approved by the Postgraduate Medical Education and Training Board<sup>13</sup>.

In addition to the information and undertakings required<sup>14</sup> by the general provisions relating to applications for inclusion in a performers list, the general medical practitioner, when making an application for the inclusion of his name in a medical performers list, must give the prescribed further information<sup>15</sup>. In respect of any medical practitioner, whose name is included in a medical performers list, the list must include the prescribed particulars<sup>16</sup>.

1 As to the meaning of 'medical practitioner' see PARA 84 note 7.

2 As to primary medical services see PARA 241.

3 'General medical practitioner' means a GP registrar or a medical practitioner whose name is included in the GP register: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1). 'GP registrar' means a medical practitioner who is being trained in general practice by a general medical practitioner who is approved under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4(5)(d) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 83) for the purpose of providing training under art 5(1)(c)(i) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 84), whether as part of training leading to the award of a CCT or otherwise: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1) (definition substituted by SI 2004/2694). 'CCT' means certificate of completion of training awarded under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 8 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 87), including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in art 20(3)(a) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 88): National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1). 'GP register', means the register kept by virtue of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 10 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 49): National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1). As to the Postgraduate Medical Education and Training Board see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 71.

4 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 22(1) (amended by SI 2006/1385). This provision is expressed to be subject to the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 22(2), (3): see the text to notes 5-11. As to the meaning of 'medical performers list' see PARA 249 note 3. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

- 5 le under the Medical Act 1983 s 15, 15A or 21: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 102, 103, 108.
- 6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 22(2). 'Employment in a resident medical capacity in an approved medical practice' has the meaning given in the Medical Act 1983 s 11(4) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 95): see the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 22(2).
- 7 le in accordance with the National Health Service (Performers Lists) Regulations 2004, SI 2004/585.
- 8 As to primary care trusts see PARA 111.
- 9 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 22(3)(a).
- 10 As to the meaning of 'month' see PARA 28 note 16.
- 11 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 22(3)(b). 'Vocational training scheme' means post-graduate medical education and training necessary for the award of a CCT in general practice under the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, SI 2003/1250, art 4: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1).
- 12 le medical practitioners who are not GP registrars, are undertaking a post-registration programme, have notified the primary care trust that they will be undertaking part or all of a post-registration programme in its area at least 24 hours before commencing any part of that programme taking place in the trust's area, and have, with that notification, provided the trust with evidence sufficient for it to satisfy itself that they are undergoing a post-registration programme: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 22(2B) (reg 22(2A), (2B) added by SI 2006/1385).
- 13 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 22(2A) (as added: see note 12).
- 14 le required by the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 4(2), (3): see PARA 249.
- 15 As to the prescribed further information see the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 23 (amended by SI 2006/1914).
- 16 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 22(4). As to the prescribed particulars see reg 22(4)(a)-(g) (reg 22(4)(c) amended by SI 2005/3491).

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## **264. Additional grounds for refusal.**

In addition to the general grounds on which a primary care trust<sup>1</sup> may refuse to include a performer<sup>2</sup> in a performers list<sup>3</sup>, a trust may also refuse to admit a medical practitioner<sup>4</sup> to its medical performers list<sup>5</sup> if: (1) having checked the information he provided with his application<sup>6</sup>, it considers he is unsuitable to be included in its list<sup>7</sup>; (2) his registration in the register of medical practitioners<sup>8</sup> is subject to conditions imposed<sup>9</sup> before 1 November 2004<sup>10</sup>; (3) his registration in the register of medical practitioners is subject<sup>11</sup> to an interim order<sup>12</sup>; (4) after 1 November 2004<sup>13</sup>, his registration in that register is subject to conditions imposed<sup>14</sup> by a fitness to practise panel<sup>15</sup>; or (5) after 1 November 2004<sup>16</sup>, his registration in that register is subject to certain other conditions imposed<sup>17</sup> by a fitness to practise panel<sup>18</sup>.

In addition to the general grounds on which a primary care trust must refuse to include a performer in a performers list<sup>19</sup>, a primary care trust must also refuse to admit a medical practitioner to its medical performers list if: (a) he is a contractor<sup>20</sup> and, at the date of his application, more of the patients<sup>21</sup> of the relevant scheme<sup>22</sup> reside in the area of another primary care trust than reside in the area of the trust in whose list he has applied for inclusion<sup>23</sup>; (b) he is a contractor and the relevant scheme is not one that lies within its area<sup>24</sup>; or (c) he is included in the medical performers list of another primary care trust, unless he has given notice to that trust that he wishes to withdraw from that list<sup>25</sup>.

In addition to checking<sup>26</sup> the general information provided by the medical practitioner with his application for inclusion in a performers list, the primary care trust must also check the additional information he is required<sup>27</sup> to provide<sup>28</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'performer' see PARA 249 note 7.

3 I.e. in addition to the grounds in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1): see PARA 250. As to the meaning of 'performers list' see PARA 249 note 5.

4 As to the meaning of 'medical practitioner' see PARA 84 note 7.

5 As to the meaning of 'medical performers list' see PARA 249 note 3.

6 I.e. under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 23(1): see PARA 263.

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(1)(a). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

8 'Register of medical practitioners' has the meaning given to it by the Medical Act 1983 s 2(2) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 34): National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1).

9 I.e. conditions imposed before the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13, pursuant to a direction under the Medical Act 1983 s 36(1)(iii) (repealed) of the professional conduct committee, s 37 (repealed) of the health committee, or s 36A (repealed) or Sch 4 para 5A(3) (repealed) of the committee on professional performance, of the General Medical Council. The Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13 came into force for all purposes on 1 November 2004: see the London Gazette (1 July 2003, 2 July 2004, 8 October 2004).

10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(1)(b).

11 Ie under the Medical Act 1983 s 41A (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 148) before the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13 (see note 9), of any of the committees mentioned in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(1)(b) (see note 9) or of the interim orders committee of the General Medical Council; or after the coming into force of that article, of a fitness to practise panel or an interim orders panel of that council.

12 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(1)(c).

13 Ie after the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13: see note 9.

14 Ie pursuant to the Medical Act 1983 s 35D(2)(c), (5)(c), (8)(c) or (12)(c): see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 144, 145.

15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(1)(d).

16 Ie after the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 14. The Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 14 came into force for all purposes on 1 November 2004: see the London Gazette (2 July 2004, 8 October 2004).

17 Ie pursuant to rules made under the Medical Act 1983 s 43, Sch 4 para 5A: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 183.

18 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(1)(e).

19 Ie in addition to the grounds in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(2): see PARA 250.

20 'Contractor' means a general medical practitioner, who both provides and performs primary medical services in accordance with arrangements under the National Health Service Act 2006 s 92 (see PARA 267) or under a general medical services contract: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'general medical practitioner' see PARA 263 note 3. As to the meaning of 'general medical services contract' see PARA 242.

21 As to the meaning of 'patient' see PARA 15 note 6.

22 'Relevant scheme' means the scheme in respect of which the general medical practitioner is applying to be included in a medical performers list: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1). 'Scheme' means an arrangement to provide primary medical services in accordance with the National Health Service Act 2006 s 92 (see PARA 267) or under a general medical services contract: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

23 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(2)(a).

24 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(2)(b).

25 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(2)(c). As to withdrawal from a list see PARA 260.

26 Ie as required by the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(3)(a): see PARA 250.

27 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 23: see PARA 263.

28 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(5).

## UPDATE

### 264 Additional grounds for refusal



TEXT AND NOTES 9-15--Correction. In heads (2), (4), for '1 November 2004' read 'the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13'. SI 2002/3135 art 13 is in force for certain purposes only: see London Gazette, 1 July 2003, 2 July 2004, 8 October 2004, and 21 August 2009.

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## **265. Grounds for removal from a medical performers list.**

In addition to the grounds<sup>1</sup> on which a primary care trust<sup>2</sup> must remove a performer<sup>3</sup> from a performers list<sup>4</sup>, the trust must remove a medical practitioner<sup>5</sup> from its medical performers list<sup>6</sup> where it becomes aware that he is: (1) the subject of a direction given<sup>7</sup> by the professional conduct committee of the General Medical Council in respect of professional misconduct or criminal offences<sup>8</sup>; (2) the subject of an order or direction made<sup>9</sup> by that committee for immediate suspension<sup>10</sup>; (3) after 1 November 2004<sup>11</sup>, the subject of a direction<sup>12</sup> by a fitness to practise panel for erasure or immediate suspension<sup>13</sup>; (4) after 1 November 2004<sup>14</sup>, the subject of a direction<sup>15</sup> by a fitness to practise panel suspending him<sup>16</sup>; (5) included in the medical performers list of another primary care trust<sup>17</sup>; or (6) if a GP registrar<sup>18</sup>, in breach of the undertaking provided<sup>19</sup> in his application for inclusion in the list and has failed to withdraw from the list after the primary care trust has given him 28 days' notice requesting him to do so<sup>20</sup>.

In relation to the power of the primary care trust to remove a performer from a performers list by reason of his not having performed services during the preceding 12 months, the trust must, in calculating the period of 12 months<sup>21</sup>, disregard any period during which the medical practitioner's registration or his entitlement to practise as such was suspended: (a) before 1 November 2004<sup>22</sup>, by a committee<sup>23</sup> of the General Medical Council<sup>24</sup>; (b) after that date, by<sup>25</sup> a fitness to practise panel<sup>26</sup>; or (c) after that date, in a health case<sup>27</sup>.

1    Ie the grounds in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(1): see PARA 254.

2    As to primary care trusts see PARA 111.

3    As to the meaning of 'performer' see PARA 249 note 7.

4    As to the meaning of 'performers list' see PARA 249 note 5.

5    As to the meaning of 'medical practitioner' see PARA 84 note 7.

6    As to the meaning of 'medical performers list' see PARA 249 note 3.

7    Ie under the Medical Act 1983 s 36(1)(i) or (ii) (repealed).

8    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 26(1)(a). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

9    Ie under the Medical Act 1983 s 38(1) (as originally enacted; repealed).

10   National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 26(1)(b).

11   Ie after the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13. The Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13 came into force for all purposes on 1 November 2004: see the London Gazette (1 July 2003, 2 July 2004, 8 October 2004).

12   Ie under the Medical Act 1983 s 35D(2)(a) or (b), (5)(a) or (b), (10)(a) or (b), or (12)(a) or (b) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 144), or s 38(1) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 146).

13   National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 26(1)(c). This provision does not apply where a direction that a medical practitioner's registration be suspended is made in a health

case: reg 26(2). 'Health case' has the meaning ascribed to it by the Medical Act 1983 s 35E(4) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 144): National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 21(1).

14     le after the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 14. The Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 14 came into force for all purposes on 1 November 2004: see the London Gazette (2 July 2004, 8 October 2004).

15     le pursuant to rules made under the Medical Act 1983 s 43, Sch 4 para 5A(3): see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 183.

16     National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 26(1)(d).

17     National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 26(1)(e).

18     As to the meaning of 'GP registrar' see PARA 263 note 3.

19     le in accordance with the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 23(2): see PARA 263.

20     National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 26(1)(f).

21     le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(7): see PARA 254.

22     le before the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13.

23     le pursuant to the Medical Act 1983 s 37 (repealed) or s 41A (as originally added; repealed).

24     National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 26(5)(a).

25     le pursuant to the Medical Act 1983 s 41A(1)(a): see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 148.

26     National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 26(5)(b).

27     National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 26(5)(c).

## **UPDATE**

### **265 Grounds for removal from a medical performers list**

TEXT AND NOTES 11-13, 22-24--Correction. In heads (3), (a), for '1 November 2004' read 'the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13'. SI 2002/3135 art 13 is in force for certain purposes only: see London Gazette, 1 July 2003, 2 July 2004, 8 October 2004, and 21 August 2009.

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**266. Additional grounds for appeal.**

In addition to the decisions of a primary care trust<sup>1</sup> against which a performer<sup>2</sup> may appeal<sup>3</sup>, a general medical practitioner<sup>4</sup> may also appeal<sup>5</sup> against a decision of the primary care trust to refuse<sup>6</sup> to include his name in its medical performers list<sup>7</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'performer' see PARA 249 note 7.

3 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258.

4 As to the meaning of 'general medical practitioner' see PARA 263 note 3.

5 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258.

6 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 24(1): see PARA 264.

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 27. As to the meaning of 'medical performers list' see PARA 249 note 3. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 248 note 1.

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## **D. OTHER ARRANGEMENTS FOR PRIMARY MEDICAL SERVICES**

### **267. Arrangements by strategic health authorities.**

A strategic health authority<sup>1</sup> may make one or more agreements<sup>2</sup> with respect to its area under which primary medical services<sup>3</sup> are provided (otherwise than by the strategic health authority)<sup>4</sup>. An agreement may not combine arrangements for the provision of primary medical services with arrangements for the provision of primary dental services<sup>5</sup>, or with arrangements for the provision of local pharmaceutical services<sup>6</sup>. However, an agreement may include arrangements for the provision of services which are not primary medical services but which may be provided under<sup>7</sup> the National Health Service Act 2006<sup>8</sup>.

A strategic health authority may make an agreement only with one or more of the following: (1) an NHS trust<sup>9</sup> or an NHS foundation trust<sup>10</sup>; (2) a medical practitioner<sup>11</sup> who meets the prescribed conditions<sup>12</sup>; (3) a health care professional<sup>13</sup> who meets the prescribed conditions<sup>14</sup>; (4) an individual who is providing services: (a) under a general medical services contract<sup>15</sup> or a general dental services contract<sup>16</sup> or a Welsh general medical services contract or a Welsh general dental services contract<sup>17</sup>; (b) in accordance with similar arrangements<sup>18</sup>; or (c) certain services<sup>19</sup> in Scotland or Northern Ireland<sup>20</sup>, or has so provided them within such period as may be prescribed<sup>21</sup>; (5) an NHS employee<sup>22</sup>, or other employees under arrangements for the provision of services<sup>23</sup>; (6) a qualifying body<sup>24</sup>; (7) a primary care trust or local health board<sup>25</sup>.

1 As to strategic health authorities see PARA 94 et seq.

2 An agreement must be in accordance with regulations under the National Health Service Act 2006 s 94 (see PARA 268): s 92(2). Regulations may provide: (1) for functions which are exercisable by a strategic health authority in relation to an agreement to be exercisable on behalf of the strategic health authority by a health board (s 92(7)(a)); and (2) for functions which are exercisable by a health board in relation to an agreement made under the National Health Service (Scotland) Act 1978 s 17C to be exercisable on behalf of the board by a strategic health authority (National Health Service Act 2006 s 92(7)(b)). Health boards exist in Scotland and are outside the scope of this work.

3 As to primary medical services see PARA 241.

4 National Health Service Act 2006 s 92(1). The National Health Service Act 2006 has effect, in relation to primary medical services provided under an agreement, as if those services were provided as a result of the delegation by the Secretary of State of his functions (by directions given under s 7: see PARA 7): s 92(6). As to the Secretary of State see PARA 6 note 8. As to the equivalent provision to the National Health Service Act 2006 ss 92, 93 in relation to Wales see the National Health Service (Wales) Act 2006 ss 50, 51. As to the meaning of 'Wales' see PARA 6 note 2. Any person providing primary medical services in accordance with the National Health Service Act 2006 s 92 or the National Health Service (Wales) Act 2006 s 50 is a public authority for the purposes of the Freedom of Information Act 2000 in respect of information relating to the provision of those services: see s 3, Sch 1 Pt III (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 para 68; National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(i)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

5 National Health Service Act 2006 s 92(3). As to primary dental services see PARA 277. As to arrangements by strategic health authorities for the provision of primary dental services see PARA 288.

6 National Health Service Act 2006 s 92(4). As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

7 le other than under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133) (pharmaceutical services: see PARA 339 et seq) or Ch 2 (ss 134-143) (local pharmaceutical services under pilot schemes: see PARA 419 et seq).

8 National Health Service Act 2006 s 92(5).

9 As to NHS trusts see PARA 155.

10 National Health Service Act 2006 s 93(1)(a). As to NHS foundation trusts see PARA 174.

11 As to the meaning of 'medical practitioner' see PARA 84 note 7.

12 National Health Service Act 2006 s 93(1)(b). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 93: the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291 (see PARAS 242, 243, 246, 247); and the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627 (see PARA 268).

13 'Health care professional' means a person who is a member of a profession regulated by a body mentioned (at the time the agreement in question is made) in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294): National Health Service Act 2006 s 93(3).

14 National Health Service Act 2006 s 93(1)(c).

15 As to the meaning of 'general medical services contract' see PARA 242.

16 As to the meaning of 'general dental services contract' see PARA 278.

17 National Health Service Act 2006 s 93(1)(d)(i). 'Welsh general medical services contract' means a contract under the National Health Service (Wales) Act 2006 s 42(2) (see PARA 242), and 'Welsh general dental services contract' means a contract under s 57(2) of that Act (see PARA 278): National Health Service Act 2006 s 93(3).

18 National Health Service Act 2006 s 93(1)(d)(ii). Similar arrangements are arrangements for the provision of services made under s 92 (see the text to notes 1-8), s 107 (see PARA 288), the National Health Service (Wales) Act 2006 s 50 (see note 4) or s 64 (see PARA 288), the National Health Service (Scotland) Act 1978 s 17C, or the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), art 15B: see the National Health Service Act 2006 s 93(1)(d)(ii), (3).

19 le under the National Health Service (Scotland) Act 1978 s 17J or s 25, or the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), art 57 or art 61.

20 National Health Service Act 2006 s 93(1)(d)(iii).

21 National Health Service Act 2006 s 93(1)(d). The power to make an agreement with a person falling within s 93(1)(d) or (e) (see the text to notes 22-23) is subject to such conditions as may be prescribed: s 93(2).

22 'NHS employee' means an individual who, in connection with the provision of services in the health service, the Scottish health service or the Northern Ireland health service, is employed by: (1) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust; (2) a primary care trust or local health board; (3) a person who is providing services under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract; (4) an individual who is providing services as specified in the National Health Service Act 2006 s 93(1)(d)(iii) (see the text to notes 19-20): s 93(3). As to the meaning of 'health service' see PARA 10 note 3. As to primary care trusts see PARA 111. As to the meaning of 'local health board' see PARA 17 note 13. 'Northern Ireland health service' means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14); and 'Scottish health service' means the health service within the meaning of the National Health Service (Scotland) Act 1978: National Health Service Act 2006 s 93(3).

23 See the National Health Service Act 2006 s 93(1)(e). See also note 21. The other employees are a section 92 employee, a section 107 employee, a section 50 employee, a section 64 employee, a section 17C employee or an Article 15B employee: s 93(1)(e). 'Section 92 employee' means an individual who, in connection with the provision of services in accordance with arrangements under s 92 (see the text to notes 1-8), is employed by a person providing or performing those services; 'section 107 employee' means an individual who, in connection with the provision of services in accordance with arrangements under s 107 (see PARA 288), is employed by a

person providing or performing those services; 'section 50 employee' means an individual who, in connection with the provision of services in accordance with arrangements under the National Health Service (Wales) Act 2006 s 50 (see note 4), is employed by a person providing or performing those services; 'section 64 employee' means an individual who, in connection with the provision of services in accordance with arrangements under the National Health Service (Wales) Act 2006 s 64 (see PARA 288), is employed by a person providing or performing those services; 'section 17C employee' means an individual who, in connection with the provision of services in accordance with arrangements under the National Health Service (Scotland) Act 1978 s 17C, is employed by a person providing or performing those services; 'Article 15B employee' means an individual who, in connection with the provision of services in accordance with arrangements under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), art 15B, is employed by a person providing or performing those services: National Health Service Act 2006 s 93(3). As to the meaning of 'person' see PARA 17 note 2.

24 National Health Service Act 2006 s 93(1)(f). 'Qualifying body' means a company which is limited by shares all of which are legally and beneficially owned by persons falling within s 93(a)-(e) or (g) (see heads (1)-(5), (7) in the text): s 93(3). As to companies limited by shares see **COMPANIES** vol 14 (2009) PARAS 78, 102.

25 National Health Service Act 2006 s 93(1)(g).

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## 268. Regulations.

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> about the provision of primary medical services<sup>3</sup> in accordance with arrangements made<sup>4</sup> by a strategic health authority<sup>5</sup>.

The regulations must: (1) include provision for participants other than strategic health authorities<sup>6</sup> to withdraw from the arrangements if they wish to do so<sup>7</sup>; (2) provide for the circumstances in which a person<sup>8</sup> providing primary medical services under the arrangements must or may accept a person as a patient<sup>9</sup> to whom such services are so provided<sup>10</sup>, may decline to accept a person as such a patient<sup>11</sup>, and may terminate his responsibility for a patient<sup>12</sup>; (3) make provision as to the right of patients to choose the persons from whom they receive services under the arrangements<sup>13</sup>.

The regulations may, in particular: (a) provide that the arrangements may be made only in prescribed circumstances<sup>14</sup>; (b) provide that the arrangements may be made only in prescribed areas<sup>15</sup>; (c) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with the arrangements<sup>16</sup>; (d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing services in accordance with the arrangements<sup>17</sup>; (e) require details of the arrangements to be published<sup>18</sup>; (f) make provision with respect to the variation and termination of the arrangements<sup>19</sup>; (g) provide for parties to the arrangements to be treated<sup>20</sup>, in such circumstances and to such extent as may be prescribed, as health service bodies<sup>21</sup>; (h) provide for directions as to payments<sup>22</sup> to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court<sup>23</sup>. The regulations may also: (i) require payments to be made under the arrangements in accordance with directions given for the purpose by the Secretary of State<sup>24</sup>; (ii) include provision requiring a primary care trust<sup>25</sup>, in prescribed circumstances and subject to prescribed conditions, to enter into a general medical services contract<sup>26</sup> on prescribed terms with any person who is providing services under the arrangements and who so requests<sup>27</sup>; (iii) include provision for the resolution of disputes as to the terms of any proposed arrangements<sup>28</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of regulations see PARA 9.

3 As to primary medical services see PARA 241.

4 I.e. arrangements made under the National Health Service Act 2006 s 92: see PARA 267.

5 National Health Service Act 2006 s 94(1). As to strategic health authorities see PARA 94 et seq. As to the equivalent provision to the National Health Service Act 2006 s 94 in relation to Wales see the National Health Service (Wales) Act 2006 s 52. As to the regulations which have been made see the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627 (amended by SI 2004/906; SI 2004/2694; SI 2005/893; SI 2005/3315; SI 2005/3491; SI 2006/1501; SI 2007/289; SI 2007/3491), and the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, SI 2004/906 (see PARAS 273, 276), which have effect under the National Health Service Act 2006 s 94 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, and the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, SI 2004/906 (with the exception of reg 7, Schedule: see PARA 276) apply in relation to England only: reg 1(2); National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, reg 1(2). Subject to the exception referred to above, at the date at which this volume states the law no equivalent regulations had been made in relation to Wales. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.



- 6 As to who may be parties to the arrangements see PARA 267.
- 7 National Health Service Act 2006 s 94(2).
- 8 As to the meaning of 'person' see PARA 17 note 2.
- 9 As to the meaning of 'patient' see PARA 15 note 6.
- 10 National Health Service Act 2006 s 94(8)(a).
- 11 National Health Service Act 2006 s 94(8)(b).
- 12 National Health Service Act 2006 s 94(8)(c).
- 13 National Health Service Act 2006 s 94(9).
- 14 National Health Service Act 2006 s 94(3)(a). 'Prescribed' means prescribed by regulations: see s 275(1).
- 15 National Health Service Act 2006 s 94(3)(b).
- 16 National Health Service Act 2006 s 94(3)(c).
- 17 National Health Service Act 2006 s 94(3)(d).
- 18 National Health Service Act 2006 s 94(3)(e).
- 19 National Health Service Act 2006 s 94(3)(f).
- 20 le for the purposes of the National Health Service Act 2006 s 9: see PARAS 228, 229.
- 21 National Health Service Act 2006 s 94(3)(g).
- 22 le directions made under the National Health Service Act 2006 s 9(11) (see PARA 229) as it has effect as a result of regulations made by virtue of s 94(3)(g) (see the text to notes 20-21): s 94(3)(h).
- 23 National Health Service Act 2006 s 94(3)(h). As to county courts see **COURTS** vol 10 (Reissue) PARA 701 et seq.
- 24 National Health Service Act 2006 s 94(4). A direction may make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates: s 94(5). Directions must be given by regulations or an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.
- 25 As to primary care trusts see PARA 111.
- 26 As to the meaning of 'general medical services contract' see PARA 242.
- 27 National Health Service Act 2006 s 94(6).
- 28 National Health Service Act 2006 s 94(7). In particular the regulations may make provision for the referral of the terms of the proposed arrangements to the Secretary of State (s 94(7)(a)), and for the Secretary of State or a person appointed by him to determine the terms on which the arrangements may be entered into (s 94(7)(b)).

## UPDATE

### 268 Regulations

NOTE 5--SI 2004/627 further amended: SI 2008/528, SI 2008/1514; SI 2009/309, SI 2009/2205, SI 2009/2230.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/D. OTHER ARRANGEMENTS FOR PRIMARY MEDICAL SERVICES/269. Transfer of liabilities.

## **269. Transfer of liabilities.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make provision for any rights and liabilities<sup>3</sup> arising under an agreement to provide primary medical services<sup>4</sup> to be transferred from strategic health authorities<sup>5</sup> to primary care trusts<sup>6</sup> and from primary care trusts to strategic health authorities<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 The power to make orders under the National Health Service Act 2006 s 95(1) is not exercisable by statutory instrument: see s 272(2), (3)(b); and PARA 9. Such orders are not recorded in this work.

3 In the absence of a specific reference in the legislation, criminal liabilities are not transferred: see *R v Pennine Acute Hospitals NHS Trust (formerly Rochdale Healthcare NHS Trust)* [2003] EWCA Crim 3436, [2004] 1 All ER 1324.

4 I.e. an agreement under the National Health Service Act 2006 s 92: see PARA 267.

5 As to strategic health authorities see PARA 94 et seq.

6 As to primary care trusts see PARA 111.

7 National Health Service Act 2006 s 95(1). Section 95(1) does not affect any other power of the Secretary of State to transfer rights and liabilities under the National Health Service Act 2006: s 95(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/E. ASSISTANCE, SUPPORT AND ACCOMMODATION/270. Assistance and support.

## ***E. ASSISTANCE, SUPPORT AND ACCOMMODATION***

### **270. Assistance and support.**

A primary care trust<sup>1</sup> may provide assistance<sup>2</sup> or support to any person<sup>3</sup> providing or proposing to provide primary medical services<sup>4</sup> under a general medical services contract<sup>5</sup>, or primary medical services in accordance arrangements<sup>6</sup> made by a strategic health authority<sup>7</sup>. The assistance or support provided by a primary care trust is provided on such terms, including terms as to payment, as the primary care trust considers appropriate<sup>8</sup>.

1 As to primary care trusts see PARA 111.

2 'Assistance' includes financial assistance: National Health Service Act 2006 s 96(3).

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to primary medical services see PARA 241.

5 National Health Service Act 2006 s 96(1)(a). As to the meaning of 'general medical services contract' see PARA 242. As to the equivalent provision to the National Health Service Act 2006 s 96 in relation to Wales see the National Health Service (Wales) Act 2006 s 53. As to the meaning of 'Wales' see PARA 6 note 2.

6 ie arrangements made under the National Health Service Act 2006 s 92: see PARA 267.

7 National Health Service Act 2006 s 96(1)(b). As to strategic health authorities see PARA 94 et seq.

8 National Health Service Act 2006 s 96(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/E. ASSISTANCE, SUPPORT AND ACCOMMODATION/271. Accommodation.

## **271. Accommodation.**

If the Secretary of State<sup>1</sup> considers that any accommodation provided by him by virtue of the National Health Service Act 2006 is suitable for use in connection with the provision of primary medical services<sup>2</sup>, he may make the accommodation available on such terms as he considers appropriate to persons<sup>3</sup> providing those services<sup>4</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to primary medical services see PARA 241.

3 As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service Act 2006 s 98. As to the equivalent provision to the National Health Service Act 2006 s 98 in relation to Wales see the National Health Service (Wales) Act 2006 s 55. As to the meaning of 'Wales' see PARA 6 note 2.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/F. LOCAL MEDICAL COMMITTEES/272. Local medical committees.

## ***F. LOCAL MEDICAL COMMITTEES***

### **272. Local medical committees.**

A primary care trust<sup>1</sup> may recognise a local medical committee<sup>2</sup> formed for its area, or for its area and that of one or more other primary care trusts, which it is satisfied is representative of the following persons<sup>3</sup>:

- 178 (1) each medical practitioner<sup>4</sup> who, under a general medical services contract<sup>5</sup> entered into by him, is providing primary medical services<sup>6</sup> in the area for which the committee is formed<sup>7</sup>;
- 179 (2) each medical practitioner who, under a general ophthalmic services contract<sup>8</sup> entered into by him, is providing primary ophthalmic services<sup>9</sup> in that area<sup>10</sup>; and
- 180 (3) each other medical practitioner who is performing primary medical services or primary ophthalmic services<sup>11</sup> in the area for which the committee is formed<sup>12</sup>, and who has notified the primary care trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented)<sup>13</sup>.

Regulations<sup>14</sup> may require: (a) a primary care trust, in the exercise of its functions<sup>15</sup> relating to primary medical services, to consult any local medical committee recognised by it on such occasions and to such extent as may be prescribed<sup>16</sup>; (b) a strategic health authority<sup>17</sup>, in the exercise of any of its functions which relate to arrangements<sup>18</sup> for the provision of primary medical services, to consult, on such occasions and to such extent as may be prescribed, any local medical committee which is recognised by a primary care trust for the area where the services are (or will be) provided under those arrangements<sup>19</sup>, and which is representative of persons<sup>20</sup> providing or performing those services under those arrangements<sup>21</sup>. A recognised local medical committee has such other functions as may be prescribed<sup>22</sup>. Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee<sup>23</sup>.

A recognised local medical committee must in respect of each year determine the amount of its administrative expenses for that year attributable to persons of whom it is representative under heads (1) and (2) above<sup>24</sup>, and the amount of its administrative expenses for that year attributable to persons of whom it is representative under head (3) above<sup>25</sup>. The administrative expenses of a local medical committee include the travelling and subsistence allowances payable to its members<sup>26</sup>.

1 As to primary care trusts see PARA 111.

2 A committee recognised under the National Health Service Act 2006 s 97 is called the local medical committee for the area for which it is formed: s 97(4).

3 National Health Service Act 2006 s 97(1). As to the equivalent provision to the National Health Service Act 2006 s 97 in relation to Wales see the National Health Service (Wales) Act 2006 s 54. As to the meaning of 'Wales' see PARA 6 note 2.

4 As to the meaning of 'medical practitioner' see PARA 84 note 7.

- 5 As to the meaning of 'general medical services contract' see PARA 242.
- 6 As to primary medical services see PARA 241.
- 7 National Health Service Act 2006 s 97(1)(a), (2)(a).
- 8 As to the meaning of 'general ophthalmic services contract' see PARA 330. As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.
- 9 As to primary ophthalmic services see PARA 328.
- 10 National Health Service Act 2006 s 97(1)(a), (2)(b) (s 97(2)(b) not yet in force in so far as it relates to primary ophthalmic services: see s 277(3)(j), (4), (5); and PARA 328 note 1). As to the continuing effect of the National Health Service Act 1977 s 45A relating to local medical committees until such time as the law relating to primary ophthalmic services comes into force see PARA 327.
- 11 In pursuance of the National Health Service Act 2006 s 83(2)(a) (see PARA 241) or s 115(4)(a) (see PARA 328), in accordance with arrangements under s 92 (see PARA 267), or under a general medical services contract or a general ophthalmic services contract: s 97(1)(b), (3)(a)(i)-(iii) (s 97(3) not yet in force in so far as it relates to primary ophthalmic services: see s 277(3)(j), (4), (5); and PARA 328 note 1).
- 12 National Health Service Act 2006 s 97(1)(b), (3)(a). As to the application of s 97(3) to primary ophthalmic services see note 11.
- 13 National Health Service Act 2006 s 97(1)(b), (3)(b). As to the application of s 97(3) to primary ophthalmic services see note 11. See also note 10.
- 14 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291 (see note 22) have effect under the National Health Service Act 2006 s 97.
- 15 As to the meaning of 'functions' see PARA 6 note 3.
- 16 National Health Service Act 2006 s 97(6). 'Prescribed' means prescribed by regulations: see s 275(1).
- 17 As to strategic health authorities see PARA 94 et seq.
- 18 In pursuance of the National Health Service Act 2006 s 92: see PARA 267.
- 19 National Health Service Act 2006 s 97(7)(a).
- 20 As to the meaning of 'person' see PARA 17 note 2.
- 21 National Health Service Act 2006 s 97(7)(b).
- 22 National Health Service Act 2006 s 97(8). The functions of a local medical committee which are prescribed for these purposes are: (1) the consideration of any complaint made to it by any medical practitioner against a specified medical practitioner providing services under a contract in the relevant area involving any question of the efficiency of those services (National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, reg 27(1)(a)); (2) the reporting of the outcome of the consideration of any such complaint to the primary care trust with whom the contract is held in cases where that consideration gives rise to any concerns relating to the efficiency of services provided under a contract (reg 27(1)(b)); (3) the making of arrangements for the medical examination of a specified medical practitioner, where the contractor or the primary care trust is concerned that the medical practitioner is incapable of adequately providing services under the contract and it so requests with the agreement of the medical practitioner concerned (reg 27(1)(c)); and (4) the consideration of the report of any such medical examination and the making of a written report as to the capability of the medical practitioner of adequately providing services under the contract to the medical practitioner concerned, the contractor and the primary care trust with whom the contractor holds a contract (reg 27(1)(d)). The specified medical practitioner referred to in heads (1) and (3) is a medical practitioner who is: (a) a contractor (reg 27(2)(a)); (b) one of two or more individuals practising in partnership who hold a contract (reg 27(2)(b)); or (c) a legal and beneficial shareholder in a company which holds a contract (reg 27(2)(c)). 'Contract' means a general medical services contract under the National Health Service Act 2006 s 84 (see PARA 242); National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, reg 2(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). 'Relevant area' means the area for which the local medical committee is formed: National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, reg 27(3). As to the meaning of 'writing' see PARA 7 note 2.

The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004, SI 2004/478. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

23 National Health Service Act 2006 s 97(5).

24 National Health Service Act 2006 s 97(9)(a). A primary care trust may: (1) on the request of a local medical committee recognised by it, allot to that committee such sums for defraying the expenses referred to in s 97(9)(a) as the primary care trust may determine (s 97(10)(a)); and (2) deduct the amount of such sums from the remuneration of persons of whom the committee is representative under heads (1) and (2) in the text under the general medical services contracts entered into by those persons with the primary care trust (s 97(10)(b)).

25 National Health Service Act 2006 s 97(9)(b). A recognised local medical committee must apportion the amount determined by it under s 97(9)(b) among the persons of whom it is representative under head (3) in the text; and each such person must pay in accordance with the committee's directions the amount so apportioned to him: s 97(11).

26 National Health Service Act 2006 s 97(12).

## **UPDATE**

### **272 Local medical committees**

NOTE 22--SI 2004/478 amended: SI 2008/1329, SI 2008/1425, SI 2009/462, SI 2010/729.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/G. PROHIBITION ON SALE OF MEDICAL PRACTICES/273. Sale of medical practices.

## **G. PROHIBITION ON SALE OF MEDICAL PRACTICES**

### **273. Sale of medical practices.**

It is unlawful<sup>1</sup> to sell the goodwill<sup>2</sup> of the medical practice<sup>3</sup> of a specified person<sup>4</sup>, unless the person no longer provides or performs the services concerned<sup>5</sup> and has never carried on the practice in a relevant area<sup>6</sup>. The fact that a person's medical practice was previously carried on by another person who at any time provided or performed the services<sup>7</sup> does not, by itself, make it unlawful<sup>8</sup> for the goodwill of his practice to be sold<sup>9</sup>.

1 As to offences in relation to this prohibition see PARA 276. Contracts within the statutory prohibition cannot be enforced at law: see eg *Freedlander v Bateman* 1953 SLT (Sh Ct) 105. For cases on the value to be attached to the goodwill of a practice, notwithstanding the restriction on sale, and on the reasonableness of covenants not to practise within the area of a practice see *Whitehill v Bradford* [1952] Ch 236, [1952] 1 All ER 115, CA; *Macfarlane v Kent* [1965] 2 All ER 376 at 381, [1965] 1 WLR 1019 at 1024 (per curiam); *Lyne-Pirkis v Jones* [1969] 3 All ER 738, [1969] 1 WLR 1293, CA; *Peyton v Mindham* [1971] 3 All ER 1215, [1972] 1 WLR 8; *Kerr v Morris* [1987] Ch 90, [1986] 3 All ER 217, CA.

2 'Goodwill' includes any part of goodwill and, in relation to a person practising in partnership, means his share of the goodwill of the partnership practice: National Health Service Act 2006 s 259(5). As to transactions deemed to be sales of goodwill see PARA 274. As to partnership see **PARTNERSHIP**.

3 'Medical practice' includes any part of a medical practice: National Health Service Act 2006 s 259(5).

4 The specified persons are:

30 (1) a person who has at any time provided general medical services under arrangements made: (a) with any council, committee or authority under the National Health Service Act 1946 (repealed) or the National Health Service Reorganisation Act 1973 (repealed) (National Health Service Act 2006 s 259(2)(a)); or (b) with any primary care trust, health authority or local health board under the National Health Service Act 1977 s 29 (repealed) (National Health Service Act 2006 s 259(2)(b));

31 (2) a person who has at any time provided or performed personal medical services in accordance with the National Health Service Act 1977 s 28C (repealed) prior to 1 March 2004 (ie the date of the coming into force of s 16CC (repealed)) (National Health Service Act 2006 s 259(3));

32 (3) a person who has at any time, in prescribed circumstances or, if regulations so provide, in all circumstances, provided or performed primary medical services:

1. (a) in accordance with s 28C arrangements (within the meaning given by the National Health Service Act 1977 s 28D (repealed)) (National Health Service Act 2006 s 259(4)(a));

1

2. (b) in accordance with arrangements under the National Health Service Act 1977 s 16CC(2)(b) (repealed) (National Health Service Act 2006 s 259(4)(b));

2

3. (c) under a general medical services contract (within the meaning of the National Health Service Act 1977 s 28Q(2) (repealed)) (National Health Service Act 2006 s 259(4)(c));

3

4. (d) in accordance with arrangements made under s 92 or the National Health Service (Wales) Act 2006 s 50 (see PARA 267) (National Health Service Act 2006 s 259(4)(d));

4



5. (e) in accordance with arrangements under s 83(2)(b) or the National Health Service (Wales) Act 2006 s 41(2)(b) (see PARA 241) (National Health Service Act 2006 s 259(4)(e));  
5
6. (f) under a general medical services contract or a Welsh general medical services contract (National Health Service Act 2006 s 259(4)(f)).  
6

Unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative: Sch 21 para 5. As to the meaning of 'person' generally see PARA 17 note 2. As to primary medical services see PARA 241. As to the meaning of 'general medical services contract' see PARA 242. 'Welsh general medical services contract' means a contract under the National Health Service (Wales) Act 2006 s 42(2) (see PARA 242): National Health Service Act 2006 s 259(5). 'Prescribed' means prescribed by regulations: see s 275(1). As to the prescribed provisions see the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, SI 2004/906, reg 3. The Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, SI 2004/906, have effect under the National Health Service Act 2006 s 259, Sch 21 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2).

5 See the National Health Service Act 2006 s 259(1)(a).

6 National Health Service Act 2006 s 259(1)(b). 'Relevant area', in relation to any council, committee, primary care trust, local health board or authority by arrangement or contract with whom a person has at any time provided or performed services, means the area, district or locality of that council, committee, primary care trust, local health board or authority (at that time): s 259(5). As to primary care trusts see PARA 111. As to the meaning of 'local health board' see PARA 17 note 13.

7 Ie the services as specified in the National Health Service Act 2006 s 259: see note 4.

8 Ie under the National Health Service Act 2006 s 259.

9 National Health Service Act 2006 Sch 21 para 4.

## UPDATE

### 273-276 Sale of medical practices ... Offence

The functions under the National Health Service Act 2006 s 259, Sch 21 are, so far as exercisable in relation to Wales, transferred to the Welsh Ministers: Welsh Ministers (Transfer of Functions) Order 2008, SI 2008/1786, art 2(b).

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## **274. Transactions deemed to be sale of goodwill.**

The following provisions apply for the purposes<sup>1</sup> of the provisions on the prohibition of the sale of medical practices<sup>2</sup>.

A disposal<sup>3</sup> of premises previously used for the purposes of a medical practice is deemed to be a sale of the goodwill<sup>4</sup> of a medical practice if the person disposing of the premises did so knowing that another person intended to use them for the purposes of that other person's medical practice<sup>5</sup>, and the consideration for the disposal substantially<sup>6</sup> exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice<sup>7</sup>. If a person disposes of any premises together with any other property, the court must<sup>8</sup> make such apportionment of the consideration as it considers just<sup>9</sup>.

Where in pursuance of any partnership agreement: (1) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership<sup>10</sup>; (2) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner's share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership<sup>11</sup>; or (3) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made<sup>12</sup>, there is deemed to have been a sale of goodwill<sup>13</sup>. The sale of goodwill is the sale of the goodwill of the practice of any partner to whom, or to whose personal representative, the consideration (or any part of it) is given or for whose benefit the services are performed<sup>14</sup>, to the partner or each of the partners by or on whose behalf the consideration (or any part of it) was given or to the partner who performed the services<sup>15</sup>.

If a person (known as the 'assistant'): (a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice)<sup>16</sup>; (b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed<sup>17</sup>; and (c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice<sup>18</sup>, a sale of the goodwill of the practice is deemed to have taken place (at the time when the remuneration was fixed) unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice<sup>19</sup>.

The goodwill of a medical practice is deemed to have been sold if<sup>20</sup>: (i) a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration to do or refrain from doing any act for the purpose of facilitating the succession of another to the practice<sup>21</sup>, or to allow any act to be done for that purpose<sup>22</sup>; (ii) a person gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice)<sup>23</sup>, and succeeds, or has previously succeeded, to the practice<sup>24</sup>.

<sup>1</sup> le for the purposes of the National Health Service Act 2006 s 259 (see PARA 273) and Sch 21 para 1 (see PARA 276).

2 See the National Health Service Act 2006 Sch 21 para 2(1), (4), (6), (8), (9). As to the meaning of 'medical practice' see PARA 273 note 3.

3 'Disposal' means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and 'disposes' and 'disposing' must be read accordingly (National Health Service Act 2006 Sch 21 para 2(3)(a)); and a person who procures the disposal of any premises must be treated as having disposed of them (Sch 21 para 2(3)(b)). As to the meaning of 'person' see PARA 273 note 4.

4 As to the meaning of 'goodwill' see PARA 273 note 2.

5 National Health Service Act 2006 Sch 21 para 2(1)(a).

6 'Substantially' in this provision means considerably, and not just enough to avoid the de minimis principle: see *Palser v Grinling* [1948] AC 291 at 316, 317, [1948] 1 All ER 1 at 11, HL (a landlord and tenant case decided under the Rent and Mortgage Interest Restrictions Act 1939).

7 National Health Service Act 2006 Sch 21 para 2(1)(b). As to the determination of the consideration in respect of any transaction see PARA 275.

8 le for the purposes of the National Health Service Act 2006 Sch 21 para 2(1): see the text to notes 2-7.

9 National Health Service Act 2006 Sch 21 para 2(2).

10 National Health Service Act 2006 Sch 21 para 2(4)(a). As to partnership see **PARTNERSHIP**.

11 National Health Service Act 2006 Sch 21 para 2(4)(b).

12 National Health Service Act 2006 Sch 21 para 2(4)(c).

13 National Health Service Act 2006 Sch 21 para 2(4). The sale is deemed to have been effected: (1) in a case to which Sch 21 para 2(4)(a) or (b) (see the text to notes 10, 11) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part was given (Sch 21 para 2(6)(a)); or (2) in a case to which Sch 21 para 2(4)(c) (see the text to note 12) applies, at the time when the agreement was made (Sch 21 para 2(6)(b)).

14 National Health Service Act 2006 Sch 21 para 2(5)(a).

15 National Health Service Act 2006 Sch 21 para 2(5)(b).

16 National Health Service Act 2006 Sch 21 para 2(7)(a).

17 National Health Service Act 2006 Sch 21 para 2(7)(b).

18 National Health Service Act 2006 Sch 21 para 2(7)(c).

19 National Health Service Act 2006 Sch 21 para 2(8).

20 National Health Service Act 2006 Sch 21 para 2(9). Schedule 21 para 2(9) does not apply: (1) if it is proved that no part of the consideration was given in respect of the goodwill (Sch 21 para 2(12)); (2) to anything done in relation to (a) the acquisition of premises for the purposes of a medical practice (Sch 21 para 2(13)(a)), (b) in pursuance of a partnership agreement (Sch 21 para 2(13)(b)), or (c) in the performance of medical services by one person as an assistant to another (Sch 21 para 2(13)(c)). As to the meaning of 'medical' see PARA 10 note 5.

21 National Health Service Act 2006 Sch 21 para 2(10)(a).

22 National Health Service Act 2006 Sch 21 para 2(10)(b).

23 National Health Service Act 2006 Sch 21 para 2(11)(a).

24 National Health Service Act 2006 Sch 21 para 2(11)(b).

## UPDATE

### 273-276 Sale of medical practices ... Offence

The functions under the National Health Service Act 2006 s 259, Sch 21 are, so far as exercisable in relation to Wales, transferred to the Welsh Ministers: Welsh Ministers (Transfer of Functions) Order 2008, SI 2008/1786, art 2(b).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/G. PROHIBITION ON SALE OF MEDICAL PRACTICES/275. Consideration.

## **275. Consideration.**

In determining for the purposes of the provisions<sup>1</sup> on the prohibition of the sale of medical practices<sup>2</sup> the consideration given in respect of any transaction, the court must: (1) have regard to any other transaction appearing to the court to be associated with the first transaction<sup>3</sup>; (2) estimate the total consideration given in respect of both or all the transactions<sup>4</sup>; and (3) apportion the total between the transactions in such manner as the court considers just<sup>5</sup>. Consideration is deemed to be given to a person<sup>6</sup> if it is given to another person but with the first person's knowledge and consent<sup>7</sup>, and it appears to the court that the first person has derived, or will derive, a substantial benefit from the giving of the consideration<sup>8</sup>.

<sup>1</sup> See for the purposes of the National Health Service Act 2006 s 259 (see PARA 273) and Sch 21 (see PARAS 273, 274, 276).

<sup>2</sup> As to the meaning of 'medical practice' see PARA 273 note 3.

<sup>3</sup> National Health Service Act 2006 Sch 21 para 3(1)(a).

<sup>4</sup> National Health Service Act 2006 Sch 21 para 3(1)(b).

<sup>5</sup> National Health Service Act 2006 Sch 21 para 3(1)(c).

<sup>6</sup> As to the meaning of 'person' see PARA 273 note 4.

<sup>7</sup> National Health Service Act 2006 Sch 21 para 3(2)(a).

<sup>8</sup> National Health Service Act 2006 Sch 21 para 3(1)(b).

## **UPDATE**

### **273-276 Sale of medical practices ... Offence**

The functions under the National Health Service Act 2006 s 259, Sch 21 are, so far as exercisable in relation to Wales, transferred to the Welsh Ministers: Welsh Ministers (Transfer of Functions) Order 2008, SI 2008/1786, art 2(b).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(i) Medical Services/G. PROHIBITION ON SALE OF MEDICAL PRACTICES/276. Offence.

## **276. Offence.**

Any person<sup>1</sup> who sells or buys the goodwill<sup>2</sup> of a medical practice<sup>3</sup> which it is unlawful to sell<sup>4</sup> is guilty of an offence<sup>5</sup>.

Any person proposing to be a party to a transaction or series of transactions<sup>6</sup> which he considers might amount to a sale of the goodwill of a medical practice in contravention of the prohibition on such sales<sup>7</sup> may ask the Secretary of State<sup>8</sup> for a certificate<sup>9</sup>. The Secretary of State must consider any such application<sup>10</sup>, and, if he is satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill of such a medical practice, issue to the applicant a certificate to that effect<sup>11</sup>.

Where any person is charged with an offence in respect of any transaction or series of transactions, it is a defence to prove that the transaction or series of transactions was certified<sup>12</sup> by the Secretary of State<sup>13</sup>. Any document purporting to be such a certificate is admissible in evidence and is deemed to be such a certificate unless the contrary is proved<sup>14</sup>. The court may disregard such a certificate if it appears to the court that the applicant for the certificate failed to disclose to the Secretary of State all the material circumstances<sup>15</sup>, or made any misrepresentation with respect to the material circumstances<sup>16</sup>.

A prosecution for an offence under these provisions may be instituted only by or with the consent of the Director of Public Prosecutions<sup>17</sup>, and the Secretary of State must, at the request of the Director, furnish him with a copy of any certificate issued<sup>18</sup> by the Secretary of State<sup>19</sup>, and copies of any documents produced to him in connection with the application for that certificate<sup>20</sup>.

1 As to the meaning of 'person' see PARA 273 note 4.

2 As to the meaning of 'goodwill' see PARA 273 note 2.

3 As to the meaning of 'medical practice' see PARA 273 note 3.

4 I.e. by virtue of the National Health Service Act 2006 s 259: see PARA 273.

5 National Health Service Act 2006 Sch 21 para 1(1). A person guilty of such an offence is liable on conviction on indictment: (1) to a fine not exceeding such amount as will in the court's opinion secure that he derives no benefit from the offence (Sch 21 para 1(1)(a)) and the further amount of £500 (Sch 21 para 1(1)(b)); or (2) to imprisonment for a term not exceeding three months, or both (Sch 21 para 1(1)). As to the determination by the court of the consideration given in respect of any transaction see PARA 275.

6 As to transactions deemed to be the sale of goodwill see PARA 274.

7 I.e. in contravention of the National Health Service Act 2006 s 259: see PARA 273.

8 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the National Health Service Act 2006 Sch 21: see s 271(1), (3)(h); and PARA 6.

9 National Health Service Act 2006 Sch 21 para 1(2).

10 National Health Service Act 2006 Sch 21 para 1(3)(a).

11 National Health Service Act 2006 Sch 21 para 1(3)(b). The certificate must be in the prescribed form, and set out all material circumstances disclosed to the Secretary of State: Sch 21 para 1(4). 'Prescribed' means

prescribed by regulations made by the Secretary of State: see s 275(1). As to the making of regulations see PARA 9. As to the prescribed form see the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, SI 2004/906, reg 7, Schedule. The Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, SI 2004/906, have effect under the National Health Service Act 2006 Sch 21 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2).

12    le under the National Health Service Act 2006 Sch 21 para 1(3): see the text to notes 10, 11.

13    National Health Service Act 2006 Sch 21 para 1(5).

14    National Health Service Act 2006 Sch 21 para 1(6). As to the evidential effect of certificates admissible by statute see **CIVIL PROCEDURE** vol 11 (2009) PARA 897.

15    National Health Service Act 2006 Sch 21 para 1(7)(a).

16    National Health Service Act 2006 Sch 21 para 1(7)(b).

17    As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1066.

18    le under the National Health Service Act 2006 Sch 21 para 1(3): see the text to notes 10, 11.

19    National Health Service Act 2006 Sch 21 para 1(8)(a).

20    National Health Service Act 2006 Sch 21 para 1(8)(b).

## **UPDATE**

### **273-276 Sale of medical practices ... Offence**

The functions under the National Health Service Act 2006 s 259, Sch 21 are, so far as exercisable in relation to Wales, transferred to the Welsh Ministers: Welsh Ministers (Transfer of Functions) Order 2008, SI 2008/1786, art 2(b).

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## **(ii) Dental Services**

### ***A. DUTY TO PROVIDE PRIMARY DENTAL SERVICES***

#### **277. Primary dental services.**

Each primary care trust<sup>1</sup> must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to provide primary dental services<sup>2</sup> within its area, or secure their provision within its area<sup>3</sup>. A primary care trust may (in addition to any other power conferred on it) provide primary dental services itself (whether within or outside its area)<sup>4</sup>. Each primary care trust must publish information about such matters as may be prescribed in relation to the primary dental services for which it makes provision under the National Health Service Act 2006<sup>5</sup>. Each primary care trust must co-operate with each other primary care trust and each local health board<sup>6</sup> in the discharge of their respective functions relating to the provision of primary dental services under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006<sup>7</sup>.

1 As to primary care trusts see PARA 111.

2 Regulations may provide that services of a prescribed description must, or must not, be regarded as primary dental services for the purposes of the National Health Service Act 2006: s 99(5). The regulations may in particular describe services by reference to the manner or circumstances in which they are provided: s 99(6). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. 'Prescribed' means prescribed by regulations: s 275(1). At the date at which this volume states the law no such regulations had been made.

3 National Health Service Act 2006 s 99(1). As to contracts for the provision of primary dental services see PARA 278 et seq. As to the functions of primary care trusts in relation to dental public health see s 111; and PARA 291. As to the meaning of 'functions' see PARA 6 note 3. As to the equivalent provision to the National Health Service Act 2006 s 99 in relation to Wales see the National Health Service (Wales) Act 2006 s 56. As to the meaning of 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 s 99(2). As to charges for dental services provided under this provision see s 176; and PARA 471.

5 National Health Service Act 2006 s 99(3). At the date at which this volume states the law no regulations had been made under this provision.

6 As to the meaning of 'local health board' see PARA 17 note 13.

7 National Health Service Act 2006 s 99(4). As to the provision of primary dental services under the National Health Service (Wales) Act 2006 see ss 56-70.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/ (ii) Dental Services/B. GENERAL DENTAL SERVICES CONTRACTS/278. General dental services contracts.

## **B. GENERAL DENTAL SERVICES CONTRACTS**

### **278. General dental services contracts.**

A primary care trust<sup>1</sup> may enter into a contract<sup>2</sup>, known as a 'general dental services contract'<sup>3</sup>, under which primary dental services<sup>4</sup> are provided<sup>5</sup>. A general dental services contract may make such provision as may be agreed between the primary care trust and the contractor<sup>6</sup> in relation to the services to be provided under the contract (which may include services which are not primary dental services)<sup>7</sup>, remuneration under the contract<sup>8</sup>, and any other matters<sup>9</sup>. A general dental services contract must require the contractor or contractors to provide, for his or their patients<sup>10</sup>, primary dental services of such descriptions as may be prescribed<sup>11</sup>.

1 As to primary care trusts see PARA 111.

2 In accordance with the provisions of the National Health Service Act 2006 ss 101-114: see PARAS 278-293.

3 National Health Service Act 2006 s 100(2).

4 As to primary dental services see PARA 277.

5 National Health Service Act 2006 s 100(1). As to the equivalent provision to the National Health Service Act 2006 ss 100, 101 in relation to Wales see the National Health Service (Wales) Act 2006 ss 57, 58. As to the meaning of 'Wales' see PARA 6 note 2. Any person providing primary dental services under a contract under the National Health Service Act 2006 s 100 or the National Health Service (Wales) Act 2006 s 57 is a public authority for the purposes of the Freedom of Information Act 2000 in respect of information relating to the provision of those services: see s 3, Sch 1 Pt III (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 para 68; National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(j)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583. As to the meaning of 'person' see PARA 17 note 12.

6 'Contractor', in relation to a general dental services contract, means any person entering into the contract with the primary care trust: National Health Service Act 2006 s 100(4). As to the persons eligible to enter general dental services contracts see s 102; and PARA 279.

7 National Health Service Act 2006 s 100(3)(a).

8 National Health Service Act 2006 s 100(3)(b). As to payments under general dental services contracts see s 103; and PARA 280.

9 National Health Service Act 2006 s 100(3)(c). As to the required terms under a general dental services contract see s 104; and PARA 281.

10 As to the meaning of 'patient' see PARA 15 note 6.

11 National Health Service Act 2006 s 101(1). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). Such regulations may in particular describe services by reference to the manner or circumstances in which they are provided: s 101(2). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the making of regulations see PARA 9. As to the prescribed services see the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, regs 14-16, Sch 1. The National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, have effect under the National Health Service Act 2006 s 101 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health

Service (General Dental Services Contracts) (Wales) Regulations 2006, SI 2006/490. As to the meaning of 'England' see PARA 6 note 2.

**UPDATE**

**278 General dental services contracts**

NOTE 11--SI 2006/490 amended: SI 2009/456, SI 2009/462.

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## **279. Persons eligible to enter contracts.**

A primary care trust<sup>1</sup> may, subject to such conditions as may be prescribed<sup>2</sup>, enter into a general dental services contract<sup>3</sup> with: (1) a dental practitioner<sup>4</sup>; (2) a dental corporation<sup>5</sup>; (3) two or more individuals practising in partnership where the statutory conditions<sup>6</sup> are satisfied<sup>7</sup>.

1 As to primary care trusts see PARA 111.

2 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the making of regulations see PARA 9. As to the prescribed conditions see the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, regs 3-7. The National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, have effect under the National Health Service Act 2006 s 102 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006, SI 2006/490. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 As to the meaning of 'general dental services contract' see PARA 278.

4 National Health Service Act 2006 s 102(1)(a). As to the meaning of 'dental practitioner' see PARA 87 note 7. As to the equivalent provision to the National Health Service Act 2006 s 102 in relation to Wales see the National Health Service (Wales) Act 2006 s 59.

5 National Health Service Act 2006 s 102(1)(b). 'Dental corporation' means a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 406): National Health Service Act 2006 s 102(4).

6 The statutory conditions are that: (1) at least one partner is a dental practitioner (National Health Service Act 2006 s 102(2)(a)); and (2) any partner who is not a dental practitioner is (a) an NHS employee (s 102(2)(b)(i)); (b) a section 92 employee, section 107 employee, section 50 employee, section 64 employee, section 17C employee or Article 15B employee (s 102(2)(b)(ii)); (c) a health care professional who is engaged in the provision of services under the National Health Service (Wales) Act 2006 or the National Health Service Act 2006 (s 102(2)(b)(iii)); or (d) an individual falling within s 108(1)(d) (see PARA 288) (s 102(2)(b)(iv)). 'Health care professional', 'NHS employee', 'section 92 employee', 'section 107 employee', 'section 50 employee', 'section 64 employee', 'section 17C employee' and 'Article 15B employee' have the meanings given by s 108 (see PARA 288): s 102(4). As to partnership see **PARTNERSHIP**.

7 National Health Service Act 2006 s 102(1)(c). Regulations may make provision as to the effect, in relation to a general dental services contract entered into by individuals practising in partnership, of a change in the membership of the partnership: s 102(3). As to such provision see the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, reg 12.

## **UPDATE**

## **279 Persons eligible to enter contracts**

NOTE 2--SI 2006/490 amended: SI 2009/456, SI 2009/462.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/ (ii) Dental Services/B. GENERAL DENTAL SERVICES CONTRACTS/280. Payments.

## **280. Payments.**

The Secretary of State<sup>1</sup> may give directions<sup>2</sup> as to payments<sup>3</sup> to be made under general dental services contracts<sup>4</sup>. Such directions may in particular: (1) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance<sup>5</sup>; (2) provide for payments to be made by reference to any scheme or scale specified in the direction<sup>6</sup>, or a determination made by any person<sup>7</sup> in accordance with factors specified in the direction<sup>8</sup>; (3) provide for the making of payments in respect of individual practitioners<sup>9</sup>; (4) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a primary care trust<sup>10</sup> only if it is satisfied as to certain conditions)<sup>11</sup>; (5) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates<sup>12</sup>. Before giving a direction, the Secretary of State must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate<sup>13</sup>, and may consult such other persons as he considers appropriate<sup>14</sup>.

A general dental services contract must require payments to be made under the contract in accordance with directions made under these provisions<sup>15</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 Such directions must be given by regulations or instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

3 'Payments' includes fees, allowances, reimbursements, loans and repayments: National Health Service Act 2006 s 103(5).

4 National Health Service Act 2006 s 103(1). As to the meaning of 'general dental services contract' see PARA 278. As to the equivalent provision to the National Health Service Act 2006 s 103 in relation to Wales see the National Health Service (Wales) Act 2006 s 60. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 s 103(3)(a).

6 National Health Service Act 2006 s 103(3)(b)(i).

7 As to the meaning of 'person' see PARA 17 note 2.

8 National Health Service Act 2006 s 103(3)(b)(ii).

9 National Health Service Act 2006 s 103(3)(c).

10 As to primary care trusts see PARA 111.

11 National Health Service Act 2006 s 103(3)(d).

12 National Health Service Act 2006 s 103(3)(e).

13 National Health Service Act 2006 s 103(4)(a). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

14 National Health Service Act 2006 s 103(4)(b).

15 National Health Service Act 2006 s 103(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/ (ii) Dental Services/B. GENERAL DENTAL SERVICES CONTRACTS/281. Other required terms.

## **281. Other required terms.**

A general dental services contract<sup>1</sup> must contain such provision<sup>2</sup> as may be prescribed by regulations<sup>3</sup>. The regulations may in particular make provision as to: (1) the manner in which, and standards to which, services must be provided<sup>4</sup>; (2) the persons<sup>5</sup> who perform services<sup>6</sup>; (3) the persons to whom services will be provided<sup>7</sup>; (4) the variation of contract terms (other than required terms)<sup>8</sup>; (5) rights of entry and inspection (including inspection of clinical records and other documents)<sup>9</sup>; (6) the circumstances in which, and the manner in which, the contract may be terminated<sup>10</sup>; (7) enforcement<sup>11</sup>; (8) the adjudication of disputes<sup>12</sup>. The regulations must make provision as to the right of patients<sup>13</sup> to choose the persons from whom they receive services<sup>14</sup>.

1 As to the meaning of 'general dental services contract' see PARA 278.

2 In addition to the provision required by the National Health Service Act 2006 ss 99-103: see PARAS 277-280.

3 National Health Service Act 2006 ss 104(1), 275(1). As to the equivalent provision to the National Health Service Act 2006 s 104 in relation to Wales see the National Health Service (Wales) Act 2006 s 61. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. As to the provision which has been made see the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, regs 10-24, Schs 2-4. The National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, have effect under the National Health Service Act 2006 s 104 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006, SI 2006/490. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 s 104(2)(a).

5 As to the meaning of 'person' see PARA 17 note 2.

6 National Health Service Act 2006 s 104(2)(b).

7 National Health Service Act 2006 s 104(2)(c).

8 National Health Service Act 2006 s 104(2)(d). 'Required terms' are terms required by or under Pt 5 (ss 99-114). Regulations under s 104(2)(d) may make provision as to the circumstances in which a primary care trust may impose a variation of contract terms: s 104(3). As to primary care trusts see PARA 111.

9 National Health Service Act 2006 s 104(2)(e).

10 National Health Service Act 2006 s 104(2)(f).

11 National Health Service Act 2006 s 104(2)(g).

12 National Health Service Act 2006 s 104(2)(h).

13 As to the meaning of 'patient' see PARA 15 note 6.

14 National Health Service Act 2006 s 104(4).

## **UPDATE**

## **281 Other required terms**

NOTE 3--SI 2005/3361 Sch 3 amended: SI 2008/528, SI 2009/309, SI 2009/462. SI 2006/490 amended: SI 2009/456, SI 2009/462.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/ (ii) Dental Services/B. GENERAL DENTAL SERVICES CONTRACTS/282. Disputes and enforcement.

## **282. Disputes and enforcement.**

Regulations<sup>1</sup> may make provision for the resolution of disputes as to the terms of a proposed general dental services contract<sup>2</sup>. Such regulations may make provision for the referral of the terms of the proposed contract to the Secretary of State<sup>3</sup>, and for the Secretary of State, or a person<sup>4</sup> appointed by him, to determine the terms on which the contract may be entered into<sup>5</sup>.

Regulations may make provision for a person or persons entering into a general dental services contract to be regarded<sup>6</sup> as a health service body, in circumstances where he or they so elect<sup>7</sup>. Such regulations may include provision as to the application of the provisions relating to NHS contracts<sup>8</sup> in cases where persons practising in partnership elect to become a health service body<sup>9</sup>, and there is a change in the membership of the partnership<sup>10</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 National Health Service Act 2006 s 105(1). As to the meaning of 'general dental services contract' see PARA 278. As to the equivalent provision to the National Health Service Act 2006 s 105 in relation to Wales see the National Health Service (Wales) Act 2006 s 62. As to the provision which has been made see the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, reg 8. The National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, have effect under the National Health Service Act 2006 s 105 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, apply in relation to England only: reg 1(2). For the equivalent regulations in relation to Wales see the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006, SI 2006/490. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 National Health Service Act 2006 s 105(2)(a). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

4 As to the meaning of 'person' see PARA 17 note 2.

5 National Health Service Act 2006 s 105(2)(b).

6 Ie for any purposes of the National Health Service Act 2006 s 9: see PARA 228.

7 National Health Service Act 2006 s 105(3). Where by virtue of such regulations, s 9(11) (see PARA 229) applies in relation to a general dental services contract (s 105(5)(a)), and a direction as to payments is made under that provision in relation to the contract (s 105(5)(b)), the direction is enforceable in a county court (if the court so orders) as if it were a judgment or order of that court (s 105(5)). As to county courts see **COURTS** vol 10 (Reissue) PARA 701 et seq. As to the provision which has been made see the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, reg 9.

8 Ie the provisions of the National Health Service Act 2006 s 9: see PARAS 228, 229.

9 National Health Service Act 2006 s 105(4)(a). As to partnership see **PARTNERSHIP**.

10 National Health Service Act 2006 s 105(4)(b).

## **UPDATE**

## **282 Disputes and enforcement**

NOTE 2--SI 2006/490 amended: SI 2009/456, SI 2009/462.





Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/ (ii) Dental Services/C. PERFORMANCE OF PRIMARY DENTAL SERVICES/283. Persons performing primary dental services.

### **C. PERFORMANCE OF PRIMARY DENTAL SERVICES**

#### **283. Persons performing primary dental services.**

Regulations<sup>1</sup> may provide that a health care professional<sup>2</sup> of a prescribed<sup>3</sup> description may not perform any primary dental service<sup>4</sup> for which a primary care trust is responsible<sup>5</sup> unless he is included in a list maintained under the regulations by a primary care trust<sup>6</sup>. The regulations may make provision in relation to such lists and in particular as to: (1) the preparation, maintenance and publication of a list<sup>7</sup>; (2) eligibility for inclusion in a list<sup>8</sup>; (3) applications for inclusion (including provision as to the primary care trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application)<sup>9</sup>; (4) the grounds on which an application for inclusion may or must be granted or refused<sup>10</sup>; (5) requirements with which a person<sup>11</sup> included in a list must comply (including the declaration of financial interests and gifts and other benefits)<sup>12</sup>; (6) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal)<sup>13</sup>; (7) circumstances in which a person included in a list may not withdraw from it<sup>14</sup>; (8) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State<sup>15</sup> or a person appointed by him)<sup>16</sup>; (9) the criteria to be applied in making decisions under the regulations<sup>17</sup>; (10) appeals against decisions made by a primary care trust under the regulations<sup>18</sup>; (11) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals<sup>19</sup>; and (12) disqualification of practitioners<sup>20</sup>.

The regulations may, in particular, also provide for: (a) a person's inclusion in a list to be subject to conditions determined by a primary care trust<sup>21</sup>; (b) a primary care trust to vary the conditions or impose different ones<sup>22</sup>; (c) the consequences of failing to comply with a condition (including removal from a list)<sup>23</sup>; (d) the review by a primary care trust of decisions made by it by virtue of the regulations<sup>24</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service (Performers Lists) Regulations 2004, SI 2004/585 (see PARAS 249-262, 284-287) have effect under the National Health Service Act 2006 s 106. The National Health Service (Performers Lists) Regulations 2004, SI 2004/585, apply to England only: reg 1(2). As to the equivalent regulations in relation to Wales see the National Health Service (Performers Lists) (Wales) Regulations 2004, SI 2004/1020. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 'Health care professional' means a person who is a member of a profession regulated by a body mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294); National Health Service Act 2006 s 106(2)(a).

3 'Prescribed' means prescribed by regulations: see the National Health Service Act 2006 s 275(1).

4 As to primary dental services see PARA 277.

5 A primary care trust is responsible for a dental service if it provides the service, or secures its provision, by or under any enactment: National Health Service Act 2006 s 106(2)(b). As to primary care trusts see PARA 111. As to the meaning of 'enactment' see PARA 10 note 7.

6 National Health Service Act 2006 s 106(1). As to the equivalent provision to the National Health Service Act 2006 s 106 in relation to Wales see the National Health Service (Wales) Act 2006 s 63.

- 7 National Health Service Act 2006 s 106(3)(a).
- 8 National Health Service Act 2006 s 106(3)(b).
- 9 National Health Service Act 2006 s 106(3)(c).
- 10 National Health Service Act 2006 s 106(3)(d).
- 11 As to the meaning of 'person' see PARA 17 note 2.
- 12 National Health Service Act 2006 s 106(3)(e).
- 13 National Health Service Act 2006 s 106(3)(f).
- 14 National Health Service Act 2006 s 106(3)(g).
- 15 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.
- 16 National Health Service Act 2006 s 106(3)(h).
- 17 National Health Service Act 2006 s 106(3)(i).
- 18 National Health Service Act 2006 s 106(3)(j).
- 19 National Health Service Act 2006 s 106(3)(k). Regulations making provision as to the matters referred to in s 106(3)(k) may in particular authorise the disclosure of information by a primary care trust to the Secretary of State, and by the Secretary of State to a primary care trust: s 106(6).
- 20 National Health Service Act 2006 s 106(3). The provision that may be so made is any provision corresponding to anything in ss 151-159 (see PARAS 388, 390, 394, 395, 397, 401, 402): see s 106(3).
- 21 National Health Service Act 2006 s 106(4)(a). The imposition of conditions must be with a view to: (1) preventing any prejudice to the efficiency of the services to which a list relates (s 106(5)(a)); or (2) preventing fraud (s 106(5)(b)).
- 22 National Health Service Act 2006 s 106(4)(b).
- 23 National Health Service Act 2006 s 106(4)(c).
- 24 National Health Service Act 2006 s 106(4)(d).

## **UPDATE**

### **283 Persons performing primary dental services**

NOTE 1--SI 2004/1020 amended: SI 2008/1425, SI 2010/729.

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## **284. Dental performers list.**

A dentist<sup>1</sup> may not perform any primary dental services<sup>2</sup>, unless he is a dentist whose name is included in a dental performers list<sup>3</sup>. However, this prohibition does not apply to a dentist who is undertaking vocational training<sup>4</sup>, during the first two months<sup>5</sup> of that training<sup>6</sup>.

In addition to the information and undertakings required by the general provisions relating to applications for inclusion in a performers list<sup>7</sup>, the dentist, when making an application for the inclusion of his name in a dental performers list, must give the prescribed further information<sup>8</sup>.

In respect of any dentist whose name is included in a dental performers list, the list must include the prescribed particulars<sup>9</sup>.

1 'Dentist' means a dental practitioner who is registered in the dentists register: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 28(2) (regs 28-30 added by SI 2005/3491). 'Dentists register' means the register referred to in the Dentists Act 1984 s 14(1) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 417): National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 28(2) (as so added). As to the meaning of 'dental practitioner' see PARA 87 note 7. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 283 note 1.

2 As to primary dental services see PARA 277.

3 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 29(1) (as added: see note 1). As to the meaning of 'dental performers list' see PARA 249 note 4.

4 'Vocational training' means a relevant period of employment during which a dentist is employed under a contract of service by an approved trainer to provide a wide range of dental care and treatment and to attend such study days as that contract provides, with the aims and objectives of enhancing clinical and administrative competence and promoting high standards through relevant post-graduate training and in particular to: (1) enable the dentist to practise and improve his skills; (2) introduce the dentist to all aspects of dental practice in primary care; (3) identify the dentist's personal strengths and weaknesses and balance them through a planned programme of training; (4) promote oral health of, and quality dental care for, patients; (5) develop further and implement peer and self review, and promote awareness of the need for professional education, training and audit as a continuing process; and (6) enable the dentist to make competent and confident professional decisions including decisions for referrals to other services, demonstrate that he is working within the guidelines regarding the ethics and confidentiality of dental practice, implement regulations and guidelines for the delivery of safe practice, know how to obtain appropriate advice on, and practical experience of, legal and financial aspects of practice, and demonstrate that he has acquired skill and knowledge in the psychology of care of patients and can work successfully as a member of a practice team: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 28(2) (as added: see note 1). 'Relevant period of employment' means: (a) one year's full-time employment; (b) an equivalent period of part-time employment; or (c) in the case of a dentist who is neither exempt under reg 31(5) (see PARA 285) from the requirement to undertake vocational training, nor has completed vocational training as in head (a) or (b), but (i) has performed community dental service, (ii) has performed personal dental services prior to 1 April 2006, (iii) has otherwise gained experience of dentistry in primary care as a dentist, (iv) has been employed in a hospital as a dentist, or (v) holds or is enrolled on a course to achieve a post-graduate qualification in dentistry registerable with the General Dental Council as an additional diploma by virtue of regulations made under the Dentists Act 1984 s 19(1)(c) (regulations with respect to the register: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 438), such period of employment, which may be less than, but must not exceed that in head (a) or an equivalent period of part-time employment, as a post-graduate dental dean or director of post-graduate dental education may determine that he must complete in order to have satisfactorily completed vocational training: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 28(3) (as so added). 'Approved trainer' means a dentist whose name is included in a dental performers list, and who has been approved for a specified period, which has not elapsed, by a post-graduate dental dean or a director of post-graduate dental education as having the requisite skills and suitable practice facilities to enable him to act as a trainer: reg 28(2) (as so added). 'Postgraduate dental dean or director of post-graduate dental education' means a dentist appointed to that position by a strategic health authority to assist in the provision of a suitable learning environment for dentists

performing primary dental services to meet the requirements and standards of the Dental Faculties of the Royal College of Surgeons of England and the Department of Health: reg 28(2) (as so added). As to strategic health authorities see PARA 94 et seq. As to the medical Royal Colleges see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 64. As to the Department of Health see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 463 et seq. 'Community dental service' means dental services provided under the National Health Service Act 2006 s 3(1)(c) (see PARA 12); in Scotland, under the NHS (Scotland) Act 1978 ss 1 and 39(2); and in Northern Ireland, under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), arts 5(1)(c), 9(1A); National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 28(2) (as so added); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). 'Personal dental services' means personal dental services provided pursuant to National Health Service (Primary Care) Act 1997 Pt I (ss 1-20) (repealed); National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 28(2) (as so added). As to the meaning of 'hospital' see PARA 12 note 4.

5 As to the meaning of 'month' see PARA 28 note 16.

6 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 29(2) (as added: see note 1).

7 In addition to those required by the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 4(2), (3): see PARA 249. As to the meaning of 'performers list' see PARA 249 note 5.

8 As to the prescribed further information see the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 30 (as added: see note 1).

9 See the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 29(3) (as added: see note 1). As to the prescribed particulars see reg 29(3)(a)-(f) (as so added).

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## **285. Additional grounds for refusal.**

In addition to the general grounds on which a primary care trust<sup>1</sup> may refuse to include a performer<sup>2</sup> in a performers list<sup>3</sup>, a primary care trust may also refuse to admit a dentist<sup>4</sup> to its dental performers list<sup>5</sup> if:

- 181 (1) having checked the information he provided with his application<sup>6</sup>, it considers he is unsuitable to be included in its list<sup>7</sup>;
  - 182 (2) his registration in the dentists register<sup>8</sup> is subject to conditions imposed<sup>9</sup> by the health committee of the General Dental Council<sup>10</sup>; or
  - 183 (3) after 31 July 2006<sup>11</sup>:
- 3
- 8. (a) his registration in the dentists register is subject to conditions imposed<sup>12</sup> by a practice committee of that council<sup>13</sup>;
  - 9. (b) he is subject to an order for immediate conditional registration imposed<sup>14</sup> by a practice committee of that council<sup>15</sup>; or
  - 10. (c) he is subject to an order for interim conditional registration imposed by a practice committee or the interim orders committee of that council<sup>16</sup> or by<sup>17</sup> the court<sup>18</sup>.
- 4

In addition to the general grounds on which a primary care trust must refuse to include a performer in a performers list<sup>19</sup>, a primary care trust must also refuse to admit a dentist to its dental performers list if: (i) he is a contractor<sup>20</sup> and the relevant scheme<sup>21</sup> is not one that lies within its area<sup>22</sup>; (ii) he is included in the dental performers list of another primary care trust, unless he has given notice to that trust that he wishes to withdraw from that list<sup>23</sup>; or (iii) he is not undertaking vocational training<sup>24</sup> and has neither completed vocational training nor is exempt<sup>25</sup> from the requirement to undertake vocational training<sup>26</sup>.

In addition to checking<sup>27</sup> the general information provided by the dentist with his application for inclusion in a performers list, the primary care trust must also check the additional information he is required<sup>28</sup> to provide<sup>29</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'performer' see PARA 249 note 7.

3 Ie in addition to the grounds in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1): see PARA 250. As to the meaning of 'performers list' see PARA 249 note 5.

4 As to the meaning of 'dentist' see PARA 284 note 1.

5 As to the meaning of 'dental performers list' see PARA 249 note 4.

6 Ie the information provided under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 30(1): see PARA 284.

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(1)(a) (regs 28, 31 added by SI 2005/3491). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 283 note 1.

- 8 As to the meaning of 'dentists register' see PARA 284 note 1.
- 9 le under the Dentists Act 1984 s 28: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 482.
- 10 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(1)(b)(i) (as added: see note 7). As to the General Dental Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 389 et seq.
- 11 le after the date on which the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, regs 18-24 came into force: see the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, regs 28(2), 31(1)(b)(ii), (c), (d) (both as added: see note 7). The Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, regs 18-24 came into force on 31 July 2006: see reg 1(4)-(6); London, Edinburgh and Belfast Gazettes, 21 July 2006.
- 12 le under the Dentists Act 1984 s 27B(6)(c), s 27C(1)(c), (2)(b) or (c), or s 28(6)(b): see **MEDICAL PROFESSIONS**.
- 13 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(1)(b)(ii) (as added: see note 7).
- 14 le under the Dentists Act 1984 s 30(2): see **MEDICAL PROFESSIONS**.
- 15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(1)(c) (as added: see note 7).
- 16 le under the Dentists Act 1984 s 32(4)(b) or (6)(c): see **MEDICAL PROFESSIONS**.
- 17 le under the Dentists Act 1984 s 32(9): see **MEDICAL PROFESSIONS**.
- 18 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(1)(d) (as added: see note 7).
- 19 le in addition to the grounds in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(2): see PARA 250.
- 20 'Contractor' means a dentist, who both provides and performs primary dental services in accordance with arrangements under the National Health Service Act 2006 s 107 (see PARA 288) or under a general dental services contract under s 100 (see PARA 278): National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 28(2) (as added: see note 7); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).
- 21 'Relevant scheme' means the scheme in respect of which the dentist is applying to be included in a dental performers list; and 'scheme' means an arrangement to provide primary dental services in accordance with the National Health Service Act 2006 s 107 (see PARA 288), or under a general dental services contract: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 28(2) (as added: see note 7). As to the meaning of 'general dental services contract' see PARA 278.
- 22 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(2)(a) (as added: see note 7).
- 23 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(2)(b) (as added: see note 7). As to withdrawal from a list see PARA 260.
- 24 As to the meaning of 'vocational training' see PARA 284 note 4.
- 25 A dentist is exempt from the requirement to undertake vocational training if: (1) he is registered as a dentist by virtue of the Dentists Act 1984 s 15(1)(b) (registration of nationals of member states who hold appropriate European diplomas: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 427) or is in any other way a person in respect of whom a member state is prohibited by Community law from imposing such a requirement (National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(5)(a) (as added: see note 7)); or (2) he has experience in primary care as a dentist for a total period of at least two years full-time or an equivalent period part-time in community dental service, in the armed forces of the Crown or, prior to 1 April 2006, in the performance of personal dental services, and part or all of that period fell within the period of four years beginning with the date of his application under reg 4 (see PARA 249) (reg 31(5)(b) (as so added)). As to the meanings of 'community dental service' and 'personal dental services' see PARA 284 note 4.
- 26 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(2)(c) (as added: see note 7).

27     le as required by the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(3)  
(a): see PARA 250.

28     le under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 30(1): see PARA  
284.

29     National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(4) (as added: see note  
7).



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## **286. Grounds for removal from a dental performers list.**

In addition to the grounds<sup>1</sup> on which a primary care trust<sup>2</sup> must remove a performer<sup>3</sup> from a performers list<sup>4</sup>, the trust must remove a dentist<sup>5</sup> from its dental performers list<sup>6</sup> where it becomes aware that he: (1) is the subject of a determination<sup>7</sup> by the professional conduct committee of the General Dental Council to suspend him<sup>8</sup>, or, after 31 July 2006<sup>9</sup>, a direction<sup>10</sup> of a practice committee of that council<sup>11</sup>; (2) is included in the dental performers list of another primary care trust<sup>12</sup>; or (3) has failed to complete vocational training<sup>13</sup> and has not withdrawn<sup>14</sup> from the list<sup>15</sup>.

In relation to the power of the primary care trust to remove a performer from a performers list by reason of his not having performed services during the preceding 12 months, the trust must, in calculating the period of 12 months<sup>16</sup>, disregard any period during which the dentist's registration or his entitlement to practise as such was suspended: (a) by the health committee<sup>17</sup> of the General Dental Council<sup>18</sup>, or the preliminary proceedings committee<sup>19</sup> of that council<sup>20</sup>; (b) after 31 July 2006<sup>21</sup>, by a practice committee<sup>22</sup> of that council in a health case<sup>23</sup>, or by a practice committee or the interim orders committee<sup>24</sup> of that council or by<sup>25</sup> the court<sup>26</sup>.

1    Ie the grounds in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(1): see PARA 254.

2    As to primary care trusts see PARA 111.

3    As to the meaning of 'performer' see PARA 249 note 7.

4    As to the meaning of 'performers list' see PARA 249 note 5.

5    As to the meaning of 'dentist' see PARA 284 note 1.

6    As to the meaning of 'dental performers list' see PARA 249 note 4.

7    Ie under the Dentists Act 1984 s 27 (as originally enacted; repealed): see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 456.

8    National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 32(1)(a)(i) (regs 28, 32 added by SI 2005/3491). As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 283 note 1.

9    Ie after the date on which the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, regs 18-24 came into force: see the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, regs 28(2), 32(1)(a)(ii) (both as added: see note 8). The Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, regs 18-24 came into force on 31 July 2006: see reg 1(4)-(6); London, Edinburgh and Belfast Gazettes, 21 July 2006.

10   Ie under the Dentists Act 1984 s 27B(6)(b) or s 27C(2)(d) or (3): see **MEDICAL PROFESSIONS**.

11   National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 32(1)(a)(ii) (as added: see note 8). Regulation 32(1)(a)(ii) does not apply where a direction that a dentist's registration be suspended is made in a health case: reg 32(2) (as so added). 'Health case' means a case falling within either the Dentists Act 1984 s 28(1) (as originally enacted; repealed) or, after 31 July 2006 (ie the coming into force of the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, regs 18-24: see note 9) the Dentists Act 1984 s 27(2)(c) (see **MEDICAL PROFESSIONS**): National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 28(2) (as so added).

12   National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 32(1)(b) (as added: see note 8).

- 13 As to the meaning of 'vocational training' see PARA 284 note 4.
- 14 Ie pursuant to the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 30(2)(b) (ii): see PARA 284.
- 15 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 32(1)(c) (as added: see note 8).
- 16 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 10(7): see PARA 254. As to the meaning of 'month' see PARA 28 note 16.
- 17 Ie under the Dentists Act 1984 s 28(1)(a) or (3)(a) (as originally enacted; repealed): see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 482.
- 18 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 32(4)(a) (as added: see note 8).
- 19 Ie under the Dentists Act 1984 s 32(1) (as originally enacted; repealed): see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 459.
- 20 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 32(4)(b) (as added: see note 8).
- 21 Ie after the coming into force of the Dentists Act 1984 (Amendment) Order 2005, SI 2005/2011, regs 18-24: see note 9.
- 22 Ie under the Dentists Act 1984 s 27B(6)(b) or s 27C(1)(b) or (d): see **MEDICAL PROFESSIONS**.
- 23 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 32(4)(c) (as added: see note 8).
- 24 Ie under the Dentists Act 1984 s 32(4)(a) or (6)(d): see **MEDICAL PROFESSIONS**.
- 25 Ie under the Dentists Act 1984 s 32(9): see **MEDICAL PROFESSIONS**.
- 26 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 32(4)(d) (as added: see note 8).

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**287. Additional grounds for appeal.**

In addition to the decisions of a primary care trust<sup>1</sup> against which a performer<sup>2</sup> may appeal<sup>3</sup>, a dentist<sup>4</sup> may also appeal<sup>5</sup> against a decision of the primary care trust<sup>6</sup> to refuse to include his name in its dental performers list<sup>7</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'performer' see PARA 249 note 7.

3 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258.

4 As to the meaning of 'dentist' see PARA 284 note 1.

5 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 15: see PARA 258.

6 Ie under the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 31(1): see PARA 285.

7 National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 33 (added by SI 2005/3491). As to the meaning of 'dental performers list' see PARA 249 note 4. As to the application of the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, see PARA 283 note 1.

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## **D. OTHER ARRANGEMENTS FOR PRIMARY DENTAL SERVICES**

### **288. Arrangements by strategic health authorities.**

A strategic health authority<sup>1</sup> may make one or more agreements<sup>2</sup> with respect to its area under which primary dental services<sup>3</sup> are provided (otherwise than by the strategic health authority)<sup>4</sup>. An agreement may not combine arrangements for the provision of primary dental services with arrangements for the provision of primary medical services<sup>5</sup>, or with arrangements for the provision of local pharmaceutical services<sup>6</sup>. However, an agreement may include arrangements for the provision of services which are not primary dental services but which may be provided under<sup>7</sup> the National Health Service Act 2006<sup>8</sup>.

A strategic health authority may make an agreement only with one or more of the following: (1) an NHS trust or an NHS foundation trust<sup>9</sup>; (2) a dental practitioner<sup>10</sup> who meets the prescribed conditions<sup>11</sup>; (3) a health care professional<sup>12</sup> who meets the prescribed conditions<sup>13</sup>; (4) an individual who is providing services: (a) under a general medical services contract<sup>14</sup> or a general dental services contract<sup>15</sup> or a Welsh general medical services contract<sup>16</sup> or a Welsh general dental services contract<sup>17</sup>; (b) in accordance with similar arrangements<sup>18</sup>; or (c) certain services<sup>19</sup> in Scotland or Northern Ireland<sup>20</sup>, or has so provided them within such period as may be prescribed<sup>21</sup>; (5) an NHS employee<sup>22</sup>, or other employees under arrangements for the provision of services<sup>23</sup>; (6) a qualifying body<sup>24</sup>; (7) a primary care trust or local health board<sup>25</sup>.

<sup>1</sup> As to strategic health authorities see PARA 94 et seq.

<sup>2</sup> An agreement must be in accordance with regulations under the National Health Service Act 2006 s 109 (see PARA 289): s 107(2). Regulations may provide: (1) for functions which are exercisable by a strategic health authority in relation to an agreement to be exercisable on behalf of the authority by a health board (s 107(7) (a)); and (2) for functions which are exercisable by a health board in relation to an agreement made under the National Health Service (Scotland) Act 1978 s 17C to be exercisable on behalf of the board by a strategic health authority (National Health Service Act 2006 s 107(7)(b)). As to the meaning of 'functions' see PARA 6 note 3. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. Health boards exist in Scotland. At the date at which this volume states the law no such regulations had been made.

<sup>3</sup> As to primary dental services see PARA 277.

<sup>4</sup> National Health Service Act 2006 s 107(1). The National Health Service Act 2006 has effect, in relation to primary dental services provided under an agreement, as if those services were provided as a result of the delegation by the Secretary of State of his functions by directions given under s 7 (see PARA 7): s 107(6). As to the Secretary of State see PARA 6 note 8. As to the equivalent provision to the National Health Service Act 2006 ss 107, 108 in relation to Wales see the National Health Service (Wales) Act 2006 ss 64, 65. As to the meaning of 'Wales' see PARA 6 note 2. Any person providing primary dental services in accordance with the National Health Service Act 2006 s 107 or the National Health Service (Wales) Act 2006 s 64 is a public authority for the purposes of the Freedom of Information Act 2000 in respect of information relating to the provision of those services: see s 3, Sch 1 Pt III (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 para 68; National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(i)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

<sup>5</sup> National Health Service Act 2006 s 107(3). As to primary medical services see PARA 241. As to arrangements made by a strategic health authority for the provision of primary medical services see PARA 267.

<sup>6</sup> See the National Health Service Act 2006 s 107(4). As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

7 le other than under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133) (pharmaceutical services: see PARA 339 et seq) or Ch 2 (ss 134-143) (local pharmaceutical services under pilot schemes: see PARA 419 et seq).

8 National Health Service Act 2006 s 107(5).

9 National Health Service Act 2006 s 108(1)(a). As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174.

10 As to the meaning of 'dental practitioner' see PARA 87 note 7.

11 National Health Service Act 2006 s 108(1)(b). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service (Personal Dental Services Agreements) Regulations 2005, SI 2005/3373 (see PARA 289) have effect under the National Health Service Act 2006 s 108.

12 'Health care professional' means a person who is a member of a profession regulated by a body mentioned (at the time the agreement in question is made) in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294): National Health Service Act 2006 s 108(3).

13 National Health Service Act 2006 s 108(1)(c). See also note 11.

14 As to the meaning of 'general medical services contract' see PARA 242.

15 As to the meaning of 'general dental services contract' see PARA 278.

16 'Welsh general medical services contract' means a contract under the National Health Service (Wales) Act 2006 s 42(2) (see PARA 242): National Health Service Act 2006 s 108(3).

17 National Health Service Act 2006 s 108(1)(d)(i). 'Welsh general dental services contract' means a contract under the National Health Service (Wales) Act 2006 s 57(2) (see PARA 278): National Health Service Act 2006 s 108(3).

18 National Health Service Act 2006 s 108(1)(d)(ii). Similar arrangements are arrangements for the provision of services under s 107 (see the text to notes 1-8), s 92 (see PARA 267), the National Health Service (Wales) Act 2006 s 50 (see PARA 267) or s 64, the National Health Service (Scotland) Act 1978 s 17C, or the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), art 15B: see the National Health Service Act 2006 s 108(1)(d)(ii), (3).

19 le services under the National Health Service (Scotland) Act 1978 s 17J or s 25, or the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), art 57 or 61.

20 National Health Service Act 2006 s 108(1)(d)(iii).

21 National Health Service Act 2006 s 108(1)(d). The power under s 108(1) to make an agreement with a person falling within s 108(1)(d) or (e) (see the text to notes 22-23) is subject to such conditions as may be prescribed: s 108(2).

22 'NHS employee' means an individual who, in connection with the provision of services in the health service, the Scottish health service or the Northern Ireland health service, is employed by: (1) an NHS trust, an NHS foundation trust or (in Northern Ireland) a health and social services trust; (2) a primary care trust or local health board; (3) a person who is providing services under a general medical services contract or a general dental services contract or a Welsh general medical services contract or a Welsh general dental services contract; (4) an individual who is providing services as specified in the National Health Service Act 2006 s 108(1)(d)(iii) (see the text to note 19-20): s 108(3). As to the meaning of 'health service' see PARA 10 note 3. 'Scottish health service' means the health service within the meaning of the National Health Service (Scotland) Act 1978; and 'Northern Ireland health service' means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14): National Health Service Act 2006 s 108(3). As to primary care trusts see PARA 111. As to the meaning of 'local health board' see PARA 17 note 13. As to the meaning of 'person' see PARA 17 note 2.

23 National Health Service Act 2006 s 108(1)(e). See also note 21. The other employees are a section 107 employee, a section 92 employee, a section 50 employee, a section 64 employee, a section 17C employee or an Article 15B employee: see s 108(1)(e). 'Section 107 employee' means an individual who, in connection with the provision of services in accordance with arrangements under s 107 (see the text to notes 1-8), is employed by a person providing or performing those services; 'section 92 employee' means an individual who, in connection with the provision of services in accordance with arrangements under s 92 (see PARA 267), is

employed by a person providing or performing those services; 'section 50 employee' means an individual who, in connection with the provision of services in accordance with arrangements under the National Health Service (Wales) Act 2006 s 50 (see **PARA 267**), is employed by a person providing or performing those services; 'section 64 employee' means an individual who, in connection with the provision of services in accordance with arrangements under the National Health Service (Wales) Act 2006 s 64, is employed by a person providing or performing those services; 'section 17C employee' means an individual who, in connection with the provision of services in accordance with arrangements under the National Health Service (Scotland) Act 1978 s 17C, is employed by a person providing or performing those services; and 'Article 15B employee' means an individual who, in connection with the provision of services in accordance with arrangements under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), art 15B, is employed by a person providing or performing those services: National Health Service Act 2006 s 108(3).

24 National Health Service Act 2006 s 108(1)(f). 'Qualifying body' means: (1) a company which is limited by shares all of which are legally and beneficially owned by persons falling within s 108(1)(a)-(e) or (g) (see heads (1)-(5), (7) in the text); and (2) a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) **PARA 406**): National Health Service Act 2006 s 108(3). As to companies limited by shares see **COMPANIES** vol 14 (2009) **PARAS 78, 102**.

25 National Health Service Act 2006 s 108(1)(g).

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## **289. Regulations.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> about the provision of primary dental services<sup>3</sup> in accordance with arrangements<sup>4</sup> made by strategic health authorities<sup>5</sup>.

The regulations must: (1) include provision for participants other than strategic health authorities<sup>6</sup> to withdraw from the arrangements if they wish to do so<sup>7</sup>; (2) provide for the circumstances in which a person<sup>8</sup> providing primary dental services under the arrangements must or may accept a person as a patient<sup>9</sup> to whom such services are so provided<sup>10</sup>, may decline to accept a person as such a patient<sup>11</sup>, or may terminate his responsibility for a patient<sup>12</sup>; (3) make provision as to the right of patients to choose the persons from whom they receive services under the arrangements<sup>13</sup>.

The regulations may, in particular: (a) provide that the arrangements may be made only in prescribed circumstances<sup>14</sup>; (b) provide that the arrangements may be made only in prescribed areas<sup>15</sup>; (c) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with the arrangements<sup>16</sup>; (d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing services in accordance with the arrangements<sup>17</sup>; (e) require details of the arrangements to be published<sup>18</sup>; (f) make provision with respect to the variation and termination of the arrangements<sup>19</sup>; (g) provide for parties to the arrangements to be treated<sup>20</sup>, in such circumstances and to such extent as may be prescribed, as health service bodies<sup>21</sup>; (h) provide for directions as to payments<sup>22</sup> to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court<sup>23</sup>. The regulations may also: (i) require payments to be made under the arrangements in accordance with directions given for the purpose by the Secretary of State<sup>24</sup>; (ii) include provision requiring a primary care trust<sup>25</sup>, in prescribed circumstances and subject to prescribed conditions, to enter into a general dental services contract<sup>26</sup> on prescribed terms with any person who is providing services under the arrangements and who so requests<sup>27</sup>; (iii) include provision for the resolution of disputes as to the terms of any proposed arrangements<sup>28</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of regulations see PARA 9.

3 As to primary dental services see PARA 277.

4 I.e. arrangements under the National Health Service Act 2006 s 107: see PARA 288.

5 National Health Service Act 2006 s 109(1). As to strategic health authorities see PARA 94 et seq. As to the equivalent provision to the National Health Service Act 2006 s 109 in relation to Wales see the National Health Service (Wales) Act 2006 s 66. As to the regulations which have been made see the National Health Service (Personal Dental Services Agreements) Regulations 2005, SI 2005/3373, which have effect under the National Health Service Act 2006 s 109 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (Personal Dental Services Agreements) Regulations 2005, SI 2005/3373, apply in relation to England only: reg 1(2). As to the equivalent regulations in relation to Wales see the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006, SI 2006/489. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the interpretation of certain provisions of the National Health Service (Personal Dental Services Agreements) Regulations 2005, SI 2005/3373, see *R (on the application of Crouch) v South Birmingham Primary Care Trust* [2008] EWHC 605 (Admin), [2008] All ER (D) 85 (Apr).

6 As to who may be parties to the arrangements see PARA 288.

- 7 National Health Service Act 2006 s 109(2).
- 8 As to the meaning of 'person' see PARA 17 note 2.
- 9 As to the meaning of 'patient' see PARA 15 note 6.
- 10 National Health Service Act 2006 s 109(8)(a).
- 11 National Health Service Act 2006 s 109(8)(b).
- 12 National Health Service Act 2006 s 109(8)(c).
- 13 National Health Service Act 2006 s 109(9).
- 14 National Health Service Act 2006 s 109(3)(a). 'Prescribed' means prescribed by regulations: s 275(1).
- 15 National Health Service Act 2006 s 109(3)(b).
- 16 National Health Service Act 2006 s 109(3)(c).
- 17 National Health Service Act 2006 s 109(3)(d).
- 18 National Health Service Act 2006 s 109(3)(e).
- 19 National Health Service Act 2006 s 109(3)(f).
- 20 Ie for the purposes of the National Health Service Act 2006 s 9: see PARAS 228, 229.
- 21 National Health Service Act 2006 s 109(3)(g).
- 22 Ie directions made under the National Health Service Act 2006 s 9(11) (see PARA 229) as it has effect as a result of regulations made by virtue of s 109(3)(g) (see the text to notes 20-21): s 109(3)(h).
- 23 National Health Service Act 2006 s 109(3)(h). As to county courts see **COURTS** vol 10 (Reissue) PARA 701 et seq.
- 24 National Health Service Act 2006 s 109(4). A direction may make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates: s 109(5).
- 25 As to primary care trusts see PARA 111.
- 26 As to the meaning of 'general dental services contract' see PARA 278.
- 27 National Health Service Act 2006 s 109(6).
- 28 National Health Service Act 2006 s 109(7). In particular the regulations may make provision: (1) for the referral of the terms of the proposed arrangements to the Secretary of State (s 109(7)(a)); and (2) for the Secretary of State or a person appointed by him to determine the terms on which the arrangements may be entered into (s 109(7)(b)).

## UPDATE

### 289 Regulations

NOTE 5--SI 2005/3373 amended: SI 2008/528, SI 2009/309, SI 2009/462. SI 2006/489 amended: SI 2009/456, SI 2009/462. *Crouch*, cited, reversed in part: [2008] EWCA Civ 1365, [2009] ICR 461, (2008) 106 BMLR 38.



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## **290. Transfer of rights and liabilities.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make provision for any rights and liabilities<sup>3</sup> arising under an agreement to provide primary dental services<sup>4</sup> to be transferred from strategic health authorities<sup>5</sup> to primary care trusts<sup>6</sup> and from primary care trusts to strategic health authorities<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 The power to make orders under the National Health Service Act 2006 s 110(1) is not exercisable by statutory instrument: see s 272(2), (3)(b); and PARA 9. Such orders are not recorded in this work.

3 In the absence of a specific reference in the legislation, criminal liabilities are not transferred: see *R v Pennine Acute Hospitals NHS Trust (formerly Rochdale Healthcare NHS Trust)* [2003] EWCA Crim 3436, [2004] 1 All ER 1324.

4 Ie an agreement under the National Health Service Act 2006 s 107: see PARA 288. As to primary dental services see PARA 277.

5 As to strategic health authorities see PARA 94 et seq.

6 As to primary care trusts see PARA 111.

7 National Health Service Act 2006 s 110(1). Section 110(1) does not affect any other power of the Secretary of State to transfer rights and liabilities under the National Health Service Act 2006: s 110(2).

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## ***E. DENTAL PUBLIC HEALTH***

### **291. Dental public health.**

A primary care trust<sup>1</sup> has such functions<sup>2</sup> in relation to dental public health in England<sup>3</sup> as may be prescribed<sup>4</sup>. Such functions of a primary care trust may be discharged by the trust itself<sup>5</sup>, by the trust and one or more other primary care trusts acting jointly<sup>6</sup>, or by any other person<sup>7</sup> or body in accordance with arrangements made by the trust<sup>8</sup>.

The following functions have been prescribed<sup>9</sup>. A primary care trust must provide, or secure the provision of, the following, to the extent that it considers necessary to meet all reasonable requirements within its area: (1) oral health promotion programmes<sup>10</sup>; (2) dental inspection of pupils in attendance at schools maintained by local education authorities<sup>11</sup>; and (3) oral health surveys<sup>12</sup> to facilitate the assessment and monitoring of oral health needs<sup>13</sup>, the planning and evaluation of oral health promotion programmes<sup>14</sup>, the planning and evaluation of the provision of primary and specialist dental services<sup>15</sup>, and the monitoring and reporting of the effect of water fluoridation programmes<sup>16</sup>. A primary care trust must participate in any oral health survey required<sup>17</sup> by the Department of Health<sup>18</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'functions' see PARA 6 note 3.

3 As to the equivalent provision to the National Health Service Act 2006 s 111 in relation to Wales see the National Health Service (Wales) Act 2006 s 67. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 s 111(1). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the making of regulations see PARA 9. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the prescribed functions see the text to notes 9-18.

5 National Health Service Act 2006 s 111(2)(a).

6 National Health Service Act 2006 s 111(2)(b).

7 As to the meaning of 'person' see PARA 17 note 2.

8 National Health Service Act 2006 s 111(2)(c).

9 See the Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 2(1). As to the equivalent regulations in relation to Wales see the Functions of Local Health Boards (Dental Public Health) (Wales) Regulations 2006, SI 2006/487.

10 Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 2(2) (a). 'Oral health promotion programme' means a health promotion and disease prevention programme the underlying purpose of which is to educate and support members of the public about ways in which they may improve their oral health: reg 1(2).

11 Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 2(2) (b). As to local education authorities see **EDUCATION** vol 15(1) (2006 Reissue) PARA 20 et seq.

12 'Oral health survey' means a survey to establish the prevalence and incidence of disease or abnormality of the oral cavity: Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 1(2).

- 13 Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 2(2) (c)(i).
- 14 Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 2(2) (c)(ii).
- 15 Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 2(2) (c)(iii). As to primary dental services see PARA 277.
- 16 Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 2(2) (c)(iv). 'Water fluoridation programme' means: (1) until the coming into force of the Water Act 2003 s 58 (fluoridation of water supplies: see **WATER AND WATERWAYS** vol 100 (2009) PARA 410 et seq), fluoridation arrangements made under the Water Industry Act 1991 s 87(5) (fluoridation of water supplies at request of health authorities: see **WATER AND WATERWAYS** vol 100 (2009) PARA 412); and (2) upon the coming into force of the Water Act 2003 s 58, fluoridation arrangements made under the Water Industry Act 1991 s 87(1) (fluoridation of water supplies at request of relevant authorities): Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 1(2). As to the ability of a water company to refuse a request to implement a fluoridation programme see *R v Northumbrian Water Ltd, ex p Newcastle and North Tyneside Health Authority* [1998] All ER (D) 733.
- 17 le as part of a survey conducted or sponsored under the National Health Service Act 2006 Sch 1 para 13 (see PARA 38): Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 2(3); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).
- 18 Functions of Primary Care Trusts (Dental Public Health) (England) Regulations 2006, SI 2006/185, reg 2(3). As to the Department of Health see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 463 et seq.

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## ***F. ASSISTANCE, SUPPORT AND ACCOMMODATION***

### **292. Assistance and support.**

A primary care trust<sup>1</sup> may provide assistance<sup>2</sup> or support to any person<sup>3</sup> providing or proposing to provide primary dental services<sup>4</sup> under a general dental services contract<sup>5</sup>, or primary dental services in accordance with arrangements<sup>6</sup> made by a strategic health authority<sup>7</sup>. Such assistance or support is provided on such terms, including terms as to payment, as the primary care trust considers appropriate<sup>8</sup>.

1 As to primary care trusts see PARA 111.

2 'Assistance' includes financial assistance: National Health Service Act 2006 s 112(3). As to the equivalent provision to the National Health Service Act 2006 s 112 in relation to Wales see the National Health Service (Wales) Act 2006 s 68. As to the meaning of 'Wales' see PARA 6 note 2.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to primary dental services see PARA 277.

5 National Health Service Act 2006 s 112(1)(a). As to the meaning of 'general dental services contract' see PARA 278.

6 ie arrangements under the National Health Service Act 2006 s 107: see PARA 288.

7 National Health Service Act 2006 s 112(1)(b). As to strategic health authorities see PARA 94 et seq.

8 National Health Service Act 2006 s 112(2).

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### **293. Accommodation.**

If the Secretary of State<sup>1</sup> considers that any accommodation provided by him by virtue of the National Health Service Act 2006 is suitable for use in connection with the provision of primary dental services<sup>2</sup>, he may make the accommodation available on such terms as he considers appropriate to persons<sup>3</sup> providing those services<sup>4</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to primary dental services see PARA 277.

3 As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service Act 2006 s 114. As to the equivalent provision to the National Health Service Act 2006 s 114 in relation to Wales see the National Health Service (Wales) Act 2006 s 70. As to the meaning of 'Wales' see PARA 6 note 2.

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## ***G. LOCAL DENTAL COMMITTEES***

### **294. Local dental committees.**

A primary care trust<sup>1</sup> may recognise a local dental committee<sup>2</sup> formed for its area, or for its area and that of one or more other primary care trusts, which it is satisfied is representative of the following persons<sup>3</sup>: (1) each dental practitioner<sup>4</sup> who, under a general dental services contract<sup>5</sup> entered into by him, is providing primary dental services<sup>6</sup> in the area for which the committee is formed<sup>7</sup>; (2) each other dental practitioner (a) who is performing primary dental services in the area for which the committee is formed where those services are provided<sup>8</sup> by the primary care trust itself<sup>9</sup>, in accordance with arrangements<sup>10</sup> made by a strategic health authority<sup>11</sup>, or under a general dental services contract<sup>12</sup>; and (b) who has notified the primary care trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented)<sup>13</sup>.

Regulations<sup>14</sup> may require: (i) a primary care trust, in the exercise of its functions<sup>15</sup> relating to primary dental services, to consult any local dental committee recognised by it on such occasions and to such extent as may be prescribed<sup>16</sup>; (ii) a strategic health authority, in the exercise of any of its functions which relate to arrangements for the provision of primary dental services<sup>17</sup>, to consult, on such occasions and to such extent as may be prescribed, any local dental committee which is recognised by a primary care trust for the area where the services are (or will be) provided under those arrangements<sup>18</sup>, and which is representative of persons providing or performing those services under those arrangements<sup>19</sup>. A recognised local dental committee has such other functions as may be prescribed<sup>20</sup>. Any such local dental committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee<sup>21</sup>.

A recognised local dental committee must in respect of each year determine the amount of its administrative expenses<sup>22</sup> for that year attributable to persons of whom it is representative under head (1) above<sup>23</sup>, and the amount of its administrative expenses for that year attributable to persons of whom it is representative under head (2) above<sup>24</sup>.

1 As to primary care trusts see PARA 111.

2 A committee recognised under the National Health Service Act 2006 s 113 is called the local dental committee for the area for which it is formed: s 113(4). As to the equivalent provision to the National Health Service Act 2006 s 113 in relation to Wales see the National Health Service (Wales) Act 2006 s 69. As to the meaning of 'Wales' see PARA 6 note 2.

3 National Health Service Act 2006 s 113(1). As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'dental practitioner' see PARA 87 note 7.

5 As to the meaning of 'general dental services contract' see PARA 278.

6 As to primary dental services see PARA 277.

7 National Health Service Act 2006 s 113(1)(a), (2).

8 Ie pursuant to the National Health Service Act 2006 s 99(2): see PARA 277.

9 National Health Service Act 2006 s 113(1)(b), (3)(a)(i).

- 10 le arrangements under the National Health Service Act 2006 s 107: see PARA 288.
- 11 National Health Service Act 2006 s 113(1)(b), (3)(a)(ii). As to strategic health authorities see PARA 94 et seq.
- 12 National Health Service Act 2006 s 113(1)(b), (3)(a)(iii).
- 13 National Health Service Act 2006 s 113(1)(b), (3)(b).
- 14 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.
- 15 As to the meaning of 'functions' see PARA 6 note 3.
- 16 National Health Service Act 2006 s 113(6). 'Prescribed' means prescribed by regulations: see s 275(1).
- 17 le arrangements under the National Health Service Act 2006 s 107: see PARA 288.
- 18 National Health Service Act 2006 s 113(7)(a).
- 19 National Health Service Act 2006 s 113(7)(b).
- 20 National Health Service Act 2006 s 113(8). At the date at which this volume states the law no regulations had been made under this provision.
- 21 National Health Service Act 2006 s 113(5).
- 22 The administrative expenses of a local dental committee include the travelling and subsistence allowances payable to its members: National Health Service Act 2006 s 113(12).
- 23 National Health Service Act 2006 s 113(9)(a). A primary care trust may on the request of a local dental committee recognised by it, allot to that committee such sums for defraying the expenses referred to in s 113(9)(a) as the primary care trust may determine (s 113(10)(a)); and deduct the amount of such sums from the remuneration of persons of whom it is representative under head (1) in the text under the general dental services contracts entered into by them with the primary care trust (s 113(10)(b)).
- 24 National Health Service Act 2006 s 113(9)(b). A recognised local dental committee must apportion the amount determined by it under s 113(9)(b) among the persons of whom it is representative under head (2) in the text; and each such person must pay in accordance with the committee's directions the amount so apportioned to him: s 113(11).

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### **(iii) Ophthalmic Services**

#### ***A. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 1977***

##### **(A) GENERAL ARRANGEMENTS FOR GENERAL OPHTHALMIC SERVICES**

##### **295. Arrangements for general ophthalmic services.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

It is the duty of every primary care trust<sup>2</sup>, in accordance with regulations<sup>3</sup>, to arrange as respects its area with medical practitioners<sup>4</sup> having the prescribed qualifications<sup>5</sup>, and ophthalmic opticians<sup>6</sup> for securing the testing by them of the sight<sup>7</sup>: (1) of a child<sup>8</sup>; (2) of a person whose resources fall to be treated under the regulations as being less than his requirements or as being equal to his requirements<sup>9</sup>; or of a person of such other description as may be prescribed<sup>10</sup>. Regulations must define the services for the provision of which such arrangements are to be made and the services so defined are known as 'general ophthalmic services'<sup>11</sup>. It is also the duty of each primary care trust, in accordance with regulations to administer the arrangements made for the provision of general ophthalmic services for its area, and to perform such management and other functions relating to those services as may be prescribed<sup>12</sup>.

The general ophthalmic services<sup>13</sup> which a contractor must provide are: (a) to test the sight of a patient<sup>14</sup> to determine whether the patient needs to wear or use an optical appliance<sup>15</sup>; (b) where a patient whose sight he has tested shows on examination signs of injury, disease or abnormality in the eye or elsewhere which may require medical treatment<sup>16</sup>, or is not likely to attain a satisfactory standard of vision notwithstanding the application of corrective lenses<sup>17</sup>, if appropriate, and with the consent of the patient, to refer the patient to an ophthalmic hospital<sup>18</sup>, inform the patient's doctor<sup>19</sup> or GP practice that he has done so, and give the patient a written statement that he has done so, with details of the referral<sup>20</sup>; (c) where he tests the sight of a patient diagnosed as suffering from diabetes or glaucoma, to inform the patient's doctor of the results of the test<sup>21</sup>.

1 The National Health Service Act 1977 ss 15, 38, 39 are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see the text to notes 13-21) will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329.

2 As to primary care trusts see PARA 111.



3 As to the matters to be included in regulations made under the National Health Service Act 1977 s 38 see s 39 (amended by the Health Services Act 1980 ss 1, 2, Sch 1 Pt I para 52; the Health and Social Security Act 1984 ss 1, 24, Sch 1 Pt I, Sch 8 Pt I; the Health Authorities Act 1995 s 2(1), Sch 1 para 28; the Health Act 1999 s 9(4); the Health and Social Care Act 2001 ss 20(1), (5), 23(1), (4); the National Health Service Reform and Health Care Professions Act 2002 s 2(5), Sch 2 Pt 1 paras 1, 12; the National Health Service (Consequential Provisions) Act 2006 Sch 4).

'Regulations' means regulations made by the Secretary of State: National Health Service Act 1977 s 128(1). As to the Secretary of State see PARA 6 note 8. As to the regulations which have been made see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (PARAS 296-326); the National Health Service (Optical Charges and Payments) Regulations 1997, SI 1997/818 (see PARAS 473, 474); the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005, SI 2005/480 (see PARA 299).

4 'Medical practitioner' means a registered medical practitioner within the meaning of the Interpretation Act 1978 s 5, Sch 1 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4): National Health Service Act 1977 s 128(1) (definition substituted by the Medical Act 1983 s 56(1), Sch 5 para 16).

5 'Prescribed' means prescribed by regulations: see the National Health Service Act 1977 s 128(1). As to the prescribed qualifications see PARA 296.

6 'Ophthalmic optician' means a person registered in the register of optometrists maintained under the Opticians Act 1989 s 7 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 838) or a body corporate registered in the register of bodies corporate maintained under s 9 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 841, 842) carrying on business as an optometrist: National Health Service Act 1977 s 128(1) (definition substituted by SI 2005/848).

7 National Health Service Act 1977 s 38(1) (amended by the Health and Social Security Act 1984 s 1; SI 1985/39; the Health and Medicines Act 1988 s 13; the Health Authorities Act 1995 Sch 1 para 27; the National Health Service Reform and Health Care Professions Act 2002, Sch 2 Pt 1 paras 1, 11; the National Health Service (Consequential Provisions) Act 2006 Sch 4).

8 National Health Service Act 1977 s 38(1)(a). 'Child' means a person who is under the age of 16 years, or a person who is under the age of 19 years and receiving qualifying full-time education: s 38(2) (s 38(2)-(7) added by the Health and Medicines Act 1988 s 13(1)). 'Qualifying full-time education' means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State; and for the purpose of this definition 'recognised educational establishment' means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university, and regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction: National Health Service Act 1977 s 38(2) (as so added). As to the time at which a person attains a particular age see PARA 36 note 7.

9 National Health Service Act 1977 s 38(1)(b). Regulations may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this provision, may direct that they be calculated: (1) by a method set out in the regulations (s 38(3)(a) (as added: see note 8)); (2) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this provision or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications (s 38(3)(b) (as so added)); (3) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament (s 38(3)(c) (as so added)); or (4) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament (s 38(3)(d) (as so added)). As to the meaning of 'enactment' see PARA 10 note 7. Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument as it has effect at the time when the regulations are made (s 38(5)(a) (as so added)); or both as it has effect at that time and as amended subsequently (s 38(5)(b) (as so added)).

10 National Health Service Act 1977 s 38(1)(c). Descriptions of persons may be prescribed for these purposes by reference to any criterion and, without prejudice to the generality of this provision, by reference to any of the following criteria: (1) their age (s 38(4)(a) (as added: see note 8)); (2) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition (s 38(4)(b) (as so added)); (3) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances (s 38(4)(c) (as so added)); (4) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit (s 38(4)(d) (as so added)); and (5) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits (s 38(4)(e) (as so added)).

11 National Health Service Act 1977 s 38(7) (as added: see note 8). Regulations may provide that a person whose sight is tested by a person who provides general ophthalmic services, and who is shown during the testing or within a prescribed time after it to fall within s 38(1) (see the text to notes 2-10), must be taken for

the purposes of the testing to have so fallen immediately before his sight was tested; and the testing must be treated for the purposes of any arrangements under s 38, for the purposes of remuneration in respect of the testing, and for any such other purpose as may be prescribed, as a testing of sight under the National Health Service Act 1977: s 38(6) (as so added). Any person providing general ophthalmic services is a public authority for the purposes of the Freedom of Information Act 2000 in respect of information relating to the provision of those services: see s 3, Sch 1 Pt III; and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583. As to the meaning of 'person' see PARA 17 note 2.

12 See the National Health Service Act 1977 s 15(1) (amended by the Health and Social Security Act 1984 s 5; the National Health Service and Community Care Act 1990 s 12(1)(b); the Health Authorities Act 1995 Sch 1 Pt I paras 1, 6; the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 6; SI 2006/1470; the National Health Service (Consequential Provisions) Act 2006 Sch 4). It is a prescribed function of each primary care trust to establish and operate, in accordance with directions, procedures for dealing with complaints about persons who provide general ophthalmic services: see the National Health Service (Functions of Health Authorities) (Complaints) Regulations 1996, SI 1996/669, reg 2 (amended by SI 2002/2469).

13 'General ophthalmic services' means the services which a contractor must provide pursuant to the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 10: reg 2(1). 'Contractor' means a person who has undertaken to provide general ophthalmic services and whose name is included in the ophthalmic list (see PARA 299): reg 2(1).

14 'Patient' means a person for whom a contractor has agreed to provide general ophthalmic services: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 2(1).

15 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 10(1) (Sch 1 para 10(1)-(3) substituted by SI 1989/1175). Where the contractor issues to a patient a prescription for glasses, he must require the patient to acknowledge receipt of the prescription: see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 10(3A), (4) (Sch 1 para 10(3A) added by SI 1988/486; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 10(4) amended by SI 1989/1175).

16 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 10(2)(a) (as substituted: see note 15).

17 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 10(2)(b) (as substituted: see note 15).

18 'Ophthalmic hospital' includes an ophthalmic department of a hospital: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 2(1).

19 'Doctor' means a registered medical practitioner: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 2(1).

20 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 10(2) (as substituted (see note 15); and amended by SI 2001/414, SI 2001/1423, SI 2005/480, SI 2006/181).

21 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 10(2)(c) (as substituted: see note 15).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

### **295 Arrangements for general ophthalmic services**

NOTES 3, 7, 12--National Health Service Act 1977 ss 15(1), 38(1), 39 further amended: Health Act 2006 Sch 8 paras 8, 12, 13, Sch 9.

NOTE 6--Definition of 'ophthalmic optician' amended: National Health Service Act 1977 s 128(1) (amended by Health Act 2006 Sch 8 para 24(b)).



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## **296. Qualifications of ophthalmic medical practitioners.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

The power<sup>2</sup> to prescribe, in relation to arrangements for the provision of general ophthalmic services<sup>3</sup>, qualifications to be possessed by any medical practitioner<sup>4</sup> includes a power to require the practitioner to satisfy a recognised committee as to his qualifications<sup>5</sup>, to confer a right of appeal to a further committee, and to make any provision which appears to the Secretary of State<sup>6</sup> to be requisite or expedient<sup>7</sup>.

The prescribed qualifications which a doctor<sup>8</sup> is to possess for the purposes of general ophthalmic services are that he has (as the date of consideration of his application for approval of his qualifications<sup>9</sup>) recent experience and that<sup>10</sup>:

- 184 (1) he has had adequate experience and has held an appointment in the health service<sup>11</sup> with the status of consultant ophthalmologist<sup>12</sup> or an appointment of not less than two years of equivalent status as ophthalmic surgeon or assistant ophthalmic surgeon on the staff of an approved<sup>13</sup> ophthalmic hospital<sup>14</sup>; or
- 185 (2) (a) he has held one or more ophthalmic appointments in an approved ophthalmic hospital for a period totalling not less than two years<sup>15</sup>; (b) unless he has been fully registered as a doctor for at least seven years and his experience is such as to make this requirement unnecessary, that period included tenure for at least six months of a residential appointment or an appointment with duties comparable with those of a residential appointment<sup>16</sup>; (c) he has obtained the membership of the Royal College of Ophthalmologists, or any approved higher degree of qualification<sup>17</sup>; or (d) he has had adequate experience<sup>18</sup>.

1 The National Health Service Act 1977 s 40 is repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continues to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see the text to notes 8-18) will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329.

2 The power conferred by the National Health Service Act 1977 s 38: see PARA 295.

3 As to the meaning of 'general ophthalmic services' see PARA 295.

4 As to the meaning of 'medical practitioner' see PARA 295 note 4.

5 See the National Health Service Act 1977 s 40(a).

6 As to the Secretary of State see PARA 6 note 8.

7 See the National Health Service Act 1977 s 40(b).

8 As to the meaning of 'doctor' see PARA 295 note 19.

9 As to such applications see PARA 297.

10 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 3(1).

11 As to the meaning of 'health service' see PARA 10 note 3.

12 Ie otherwise than under the National Health Service Act 1946 Pt II (ss 3-18) (repealed) or Pt IV (ss 31-47) (repealed).

13 'Approved' means approved by the ophthalmic qualifications committee: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 3(2). 'Ophthalmic qualifications committee' means such committee appointed by organisations representative of the medical profession as may be recognised by the Secretary of State for the purposes of approving: (1) ophthalmic hospitals, academic degrees, academic or post-graduate courses in ophthalmology and appointments affording special opportunities for acquiring the necessary skill and experience of the type required for the provision of general ophthalmic services; and (2) the qualifications of doctors for the purpose of the general ophthalmic services: reg 2(1). In relation to Wales the powers of the Secretary of State under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, are exercisable by the Welsh Ministers: see the National Health Service (Wales) Act 2006 ss 71-79, 206(1); and PARA 338. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the meaning of 'ophthalmic hospital' see PARA 295 note 18.

14 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 3(1)(a).

15 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 3(1)(b)(i).

16 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 3(1)(b)(ii). As to the registration of doctors see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 34 et seq.

17 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 3(1)(b)(iii) (reg 3(1)(b)(iii), (iv) amended by SI 1999/693). As to the Royal College of Ophthalmologists see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 64.

18 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 3(1)(b)(iv) (as amended: see note 17).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

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## **297. Approval of qualifications of ophthalmic medical practitioners.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

A doctor<sup>2</sup> who wishes to establish his status as an ophthalmic medical practitioner<sup>3</sup> must apply to the ophthalmic qualifications committee<sup>4</sup> for approval of his qualifications and must give to it such particulars and qualifications as it requires<sup>5</sup>. The ophthalmic qualifications committee must consider and determine the doctor's application and, within two months<sup>6</sup> after the date of the application, must inform him of its determination<sup>7</sup>. If it is satisfied that the doctor possesses the necessary qualifications he is an ophthalmic medical practitioner<sup>8</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'doctor' see PARA 295 note 19.

3 'Ophthalmic medical practitioner' means a doctor whose qualifications have in accordance with the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 4 or reg 5 (see PARA 298) been approved as being prescribed qualifications: reg 2(1).

4 As to the meaning of 'ophthalmic qualifications committee' see PARA 296 note 13.

5 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 4(1). As to qualifications see PARA 296.

6 As to the meaning of 'month' see PARA 28 note 16.

7 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 4(2). As to appeals against determinations of the committee see PARA 298.

8 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 4(3).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

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## **298. Appeals from ophthalmic qualifications committee.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

Any person dissatisfied with the determination of the ophthalmic qualifications committee<sup>2</sup> that he is not qualified as an ophthalmic medical practitioner<sup>3</sup> may, within one month<sup>4</sup> from the date upon which he received notice of that determination, or such longer period as the Secretary of State<sup>5</sup> may at any time allow, appeal against the determination by sending to the Secretary of State a notice of appeal stating the facts and contentions upon which he relies<sup>6</sup>.

The Secretary of State must: (1) appoint to determine the appeal an appeal committee of five persons of whom at least three must be appointed after consultation with such bodies or organisations representing doctors<sup>7</sup> as appear to him to be concerned<sup>8</sup>; (2) refer the appeal to that appeal committee<sup>9</sup>; (3) send a copy of the notice of appeal to the ophthalmic qualifications committee and to such other persons<sup>10</sup> as may appear to him to be interested in the appeal<sup>11</sup>; and (4) inform the appellant, the ophthalmic qualifications committee and any such other persons that the appeal has been referred to an appeal committee, and of the address to which communications to the appeal committee must be sent<sup>12</sup>.

The appeal committee may, and if requested to do so by the appellant or the ophthalmic qualifications committee must, hold a hearing in connection with the appeal at such time and place as it may direct<sup>13</sup>. Either the appellant or the ophthalmic qualifications committee may, within one month of being informed that the appeal has been referred to an appeal committee, or of being informed that a hearing of the appeal would be held, give notice of a wish to appear before the appeal committee<sup>14</sup>. The ophthalmic qualifications committee is entitled to appear by a member or by a clerk or other officer duly appointed for the purpose; the appellant is entitled to appear in person, by any member of his family, by any friend, or any officer or member of any organisation of which he is a member; and any party to an appeal is entitled to appear and be heard by counsel or solicitor<sup>15</sup>. Subject to the above provisions<sup>16</sup>, the procedure of the appeal committee in determining the appeal is such as it thinks proper<sup>17</sup>.

An appeal committee has all the powers of the ophthalmic qualifications committee, including in particular the power of approval, and if satisfied that an appellant possesses the prescribed qualifications<sup>18</sup>, it must so determine and accordingly he is an ophthalmic medical practitioner<sup>19</sup>. The appeal committee must, as soon as practicable, notify its determination to the appellant, the ophthalmic qualifications committee, the Secretary of State and any other person to whom the Secretary of State has sent notice of the appeal<sup>20</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'ophthalmic qualifications committee' see PARA 296 note 13.

3 As to such determinations see PARA 297. As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3.

- 4 As to the meaning of 'month' see PARA 28 note 16.
- 5 As to the Secretary of State see PARA 6 note 8. In relation to Wales the powers of the Secretary of State under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, are exercisable by the Welsh Ministers: see the National Health Service (Wales) Act 2006 ss 71-79, 206(1); and PARA 338. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.
- 6 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(1).
- 7 As to the meaning of 'doctor' see PARA 295 note 19.
- 8 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(2)(a).
- 9 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(2)(b).
- 10 As to the meaning of 'person' see PARA 17 note 2.
- 11 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(2)(c).
- 12 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(2)(d).
- 13 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(3). Notice of the hearing must, not less than 14 days before the date of the hearing, be sent by recorded delivery service to the appellant, the ophthalmic qualifications committee and any other person to whom the Secretary of State has sent notice of the appeal: reg 5(3). As to the service of documents by post see PARA 27 note 7.
- 14 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(4).
- 15 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(5).
- 16 Ie subject to the provisions of the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(1)-(5): see the text to notes 2-15.
- 17 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(6).
- 18 Ie the qualifications prescribed by the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 3: see PARA 296.
- 19 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(7).
- 20 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 5(8).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.



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## **299. Ophthalmic lists.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

A primary care trust<sup>2</sup> and a local health board<sup>3</sup> must keep and publish a list called the 'ophthalmic list' of those persons<sup>4</sup> who have undertaken<sup>5</sup> to provide general ophthalmic services<sup>6</sup> in its area<sup>7</sup>. The ophthalmic list must be divided into two parts, of which the first part must relate to ophthalmic medical practitioners<sup>8</sup> and the second part to opticians<sup>9</sup>. Each part must contain the prescribed information<sup>10</sup>. The primary care trust and local health board must send a copy of the ophthalmic list to the local medical committee<sup>11</sup> and the local optical committee<sup>12</sup> and, at intervals of not more than three months<sup>13</sup>, must notify each of them of any alteration made in that list<sup>14</sup>. A copy of the ophthalmic list must be available for inspection at the offices of the primary care trust or local health board<sup>15</sup>.

A primary care trust must also prepare and publish a supplementary list of all ophthalmic medical practitioners or opticians approved by it for the purposes of assisting in the provision of general ophthalmic services<sup>16</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to primary care trusts see PARA 111.

3 As to local health boards see PARA 75.

4 As to the meaning of 'person' see PARA 17 note 2.

5 Ie pursuant to the provisions of the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7: see PARA 300.

6 As to the meaning of 'general ophthalmic services' see PARA 295 note 13.

7 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 6(1) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 6(1) amended by SI 1996/705; SI 2001/3739; SI 2002/1883; SI 2002/2469; SI 2005/480; SI 2006/181).

8 As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3.

9 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 6(2). 'Optician' means a person registered in the register of optometrists maintained under the Opticians Act 1989 s 7 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 838) or a corporate optician; and 'corporate optician' means a body corporate registered in the register of bodies corporate maintained under the Opticians Act 1989 s 9 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 841, 842) which is carrying on business as an optometrist: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 2(1) (definitions substituted by SI 2005/1481; SI 2007/122).

10 As to the prescribed information see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 6(3) (amended by SI 2005/480; SI 2006/181).

- 11 As to local medical committees see PARA 327.
- 12 As to local optical committees see PARA 327.
- 13 As to the meaning of 'month' see PARA 28 note 16.
- 14 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A) (as added: see note 7), 6(4) (amended by SI 2001/3739; SI 2002/1883; SI 2002/2469).
- 15 See PARA 320.
- 16 See the National Health Service Act 1977 s 43D (added by the Health and Social Care Act 2001 s 24; and repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continuing to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1); and the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005, SI 2005/480. The regulations apply in relation to England only: reg 1(3). Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005, SI 2005/480, will lapse. As to the equivalent regulations in relation to Wales see PARA 338.

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

### **299 Ophthalmic lists**

NOTE 16--National Health Service Act 1977 s 43D amended: Health Act 2006 Sch 8 para 15.

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### **300. Application for inclusion in ophthalmic list and notification.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

An ophthalmic medical practitioner<sup>2</sup> or optician<sup>3</sup> who wishes to be included in the ophthalmic list<sup>4</sup> of a primary care trust<sup>5</sup> or local health board<sup>6</sup> must send to that trust or board an application to that effect which must indicate whether the applicant is an ophthalmic medical practitioner, a registered ophthalmic optician<sup>7</sup> or a corporate optician<sup>8</sup> carrying on business as ophthalmic opticians<sup>9</sup>. Before making a decision on the ophthalmic medical practitioner or optician's application, the trust or local health board must: (1) check, as far as reasonably practicable, the information he provided and ensure that it has sight of relevant documents<sup>10</sup>; (2) check with the NHS Business Services Authority<sup>11</sup> whether the ophthalmic medical practitioner or optician has any record of fraud<sup>12</sup>; (3) check with the Secretary of State<sup>13</sup> as to any information held by him as to any record about past or current investigations or proceedings involving or related to the ophthalmic medical practitioner or optician<sup>14</sup>; and (4) take up the references provided by the ophthalmic medical practitioner or optician<sup>15</sup>.

When the primary care trust or local health board has decided whether or not to include the ophthalmic medical practitioner or optician in its list, it must notify him<sup>16</sup> of that decision<sup>17</sup>; and if it has decided not to include him in the list, must notify him also of the reasons for the decision (including any facts relied upon) and of any right of appeal<sup>18</sup> against that decision<sup>19</sup>. A trust or local health board may defer consideration of a decision on an application by an ophthalmic medical practitioner or optician to be included in the ophthalmic list on certain grounds<sup>20</sup>.

A contractor<sup>21</sup> must, within 14 days of any change or addition affecting the entries which the ophthalmic list is required to contain in relation to him, notify the primary care trust or local health board accordingly<sup>22</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3.

3 As to the meaning of 'optician' see PARA 299 note 9.

4 As to ophthalmic lists see PARA 299.

5 As to primary care trusts see PARA 111.

6 As to local health boards see PARA 75.

7 As to the meaning of 'ophthalmic optician' see PARA 295 note 6.

8 As to the meaning of 'corporate optician' see PARA 299 note 9.

9 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 7(1) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1) amended by SI 2001/3739, SI 2002/1883, SI 2002/2469, SI 2005/480, SI 2006/181). As to the information to be included in such applications see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1)(a)-(c) (amended by SI 1996/705; SI 2001/3739; SI 2002/601; SI 2002/1883; SI 2005/480; SI 2006/181); National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1A) (added by SI 2005/480; SI 2006/181); National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1A (added by SI 2001/3739; and amended by SI 2002/601, SI 2002/2469, SI 2002/2802, SI 2004/865, SI 2004/1016, SI 2005/480, SI 2006/181).

10 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1B) (a) (reg 7(1B)-(1C) added by SI 2005/480; SI 2006/181).

11 As to the NHS Business Services Authority see PARA 152.

12 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1B)(b) (as added (see note 10); and amended by SI 2006/635).

13 As to the Secretary of State see PARA 6 note 8. In relation to Wales the powers of the Secretary of State under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, are exercisable by the Welsh Ministers: see the National Health Service (Wales) Act 2006 ss 71-79, 206(1); and PARA 338. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

14 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1B)(c) (as added: see note 10).

15 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1B) (d) (as added: see note 10).

16 Ie within seven days of that decision: see National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1C)(a) (as added: see note 10).

17 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1C)(a) (as added: see note 10). A primary care trust was entitled to refuse to include an applicant on its ophthalmic list where that applicant was one which provided services only to its members, with those members having to meet certain criteria and pay a subscription before being able to receive those services. The pre-condition to the grant of services presented by the requirement for membership and the payment of a membership subscription constituted an infringement of the requirement (see PARA 325) that any eligible person be able to have his sight tested by any contractor on the list, and also the requirement in the terms of service (see PARA 323) that services be free of charge: *Costco Wholesale UK Ltd v Milton Keynes Primary Care Trust* [2008] EWHC 216 (Admin), [2008] All ER (D) 265 (Feb).

18 Ie under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7C: see PARA 302.

19 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7(1C) (b) (as added: see note 10). As to the grounds for refusal to include a person in the list see PARA 301.

20 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A) (as added: see note 9), 7B (added by SI 2001/3739, SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181, SI 2006/635).

21 As to the meaning of 'contractor' see PARA 295 note 13.

22 National Health Service (General Ophthalmic Services) Regulations 1986 regs 2(1A) (as added: see note 9), 7(2) (amended by SI 2001/3739; SI 2002/1883; SI 2002/2469).

## UPDATE

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

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### **301. Grounds for refusal.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

The grounds on which a primary care trust<sup>2</sup> or local health board<sup>3</sup> may refuse to include<sup>4</sup> an ophthalmic medical practitioner<sup>5</sup> or optician<sup>6</sup> in its ophthalmic list<sup>7</sup> are: (1) that the trust or board has considered the information provided in the application<sup>8</sup> and any other information in its possession in relation to the application and considers he is unsuitable to be included in the list<sup>9</sup>; (2) that having checked the information provided by the ophthalmic medical practitioner or optician, the trust or board is not satisfied with the information<sup>10</sup>; (3) that having contacted the referees nominated by the ophthalmic medical practitioner or optician, the trust or board is not satisfied with the references given<sup>11</sup>; (4) that, having checked with the NHS Business Services Authority<sup>12</sup> for any facts that it considers relevant relating to past or current fraud investigations involving or related to the ophthalmic medical practitioner or optician and, having considered these and any other facts in its possession relating to fraud involving or relating to him, the trust or board considers these justify such refusal<sup>13</sup>; (5) that there are any grounds for the trust or board to consider that admitting the ophthalmic medical practitioner or optician to the list would be prejudicial to the efficiency of the service which he would undertake<sup>14</sup>; or (6) that, having checked with the Secretary of State<sup>15</sup> for any facts that he considers relevant relating to past or current investigations or proceedings involving or related to the ophthalmic medical practitioner or optician and, having considered these and any other facts in its possession involving or relating to him, the trust or board considers these justify such refusal<sup>16</sup>. Where the trust or board is considering refusal of an ophthalmic medical practitioner or optician under any of these heads, it must consider all facts which appear to it to be relevant<sup>17</sup>.

The grounds on which a primary care trust or local health board must refuse to include an ophthalmic medical practitioner or optician are<sup>18</sup>: (a) where he has been convicted in the United Kingdom of murder<sup>19</sup>; (b) where, after 13 December 2001, he has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over six months<sup>20</sup>; (c) where he is the subject of a national disqualification<sup>21</sup>; (d) where he has not updated his application as required<sup>22</sup>; (e) where he does not notify the trust or board that he wishes to be included in the list subject to the specified conditions<sup>23</sup>; (f) where he has not provided satisfactory evidence that he intends to provide general ophthalmic services<sup>24</sup> in its locality<sup>25</sup>; (g) except in the case of a corporate optician<sup>26</sup>, where it is not satisfied that he has the knowledge of English which, in his own interests or those of his patients<sup>27</sup>, is necessary for the provision of general ophthalmic services in its locality<sup>28</sup>; or (h) where he has had his name included in the supplementary list<sup>29</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to primary care trusts see PARA 111.

3 As to local health boards see PARA 75.

- 4   le under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7: see PARA 300.
- 5   As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3.
- 6   As to the meaning of 'optician' see PARA 299 note 9.
- 7   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 7A(1) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A added by SI 2001/3739, SI 2002/1883; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(1) amended by SI 2002/2469, SI 2005/480, SI 2006/181). As to the ophthalmic list see PARA 299.
- 8   As to applications for inclusion in the ophthalmic list see PARA 300.
- 9   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(1) (a) (as added (see note 7); and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181).
- 10   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(1) (b) (as added (see note 7); and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181).
- 11   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(1) (c) (as added (see note 7); and substituted by SI 2002/601).
- 12   As to the NHS Business Services Authority see PARA 152.
- 13   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(1) (d) (as added (see note 7); substituted by SI 2005/480, SI 2006/181; and amended by SI 2006/635).
- 14   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(1) (e) (as added (see note 7); and amended by SI 2002/2469).
- 15   As to the Secretary of State see PARA 6 note 8. In relation to Wales the powers of the Secretary of State under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, are exercisable by the Welsh Ministers: see the National Health Service (Wales) Act 2006 ss 71-79, 206(1); and PARA 338. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.
- 16   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(1) (f) (reg 7A as added (see note 7); reg 7A(1)(f) added by SI 2005/480, SI 2006/181).
- 17   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(3) (as added (see note 7); and amended by SI 2002/2469). As to matters which must in particular be taken into consideration in relation to heads (1), (2) and (4) in the text see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(3)(a)-(j), (4) (as so added).
- 18   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 7A(2) (both as added (see note 7); reg 7A(2) amended by SI 2002/2469).
- 19   National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(2)(a) (as added: see note 7). As to the meaning of 'United Kingdom' see PARA 15 note 8. As to murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 89.
- 20   National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(2)(b) (as added: see note 7).
- 21   National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(2)(c) (as added: see note 7). As to national disqualification see PARA 313.
- 22   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(2) (d) (as added: see note 7).
- 23   See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(2) (e) (as added (see note 7); and amended by SI 2002/601, SI 2002/2469).
- 24   As to the meaning of 'general ophthalmic services' see PARA 295 note 13.

25 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(2)(f) (reg 7A as added (see note 7); reg 7A(2)(f)-(h) added by SI 2005/480, SI 2006/181).

26 As to the meaning of 'corporate optician' see PARA 299 note 9.

27 As to the meaning of 'patient' see PARA 295 note 14.

28 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(2)(g) (as added: see note 25).

29 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(2)(h) (as added: see note 25). As to supplementary lists see PARA 299.

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(iii) Ophthalmic Services/A. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 1977/(A) General Arrangements for General Ophthalmic Services/302. Appeals against refusal of application for inclusion in ophthalmic list.

### **302. Appeals against refusal of application for inclusion in ophthalmic list.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

Except in a case to which the mandatory grounds of refusal<sup>2</sup> apply, an ophthalmic medical practitioner<sup>3</sup> or optician<sup>4</sup> may appeal to the Family Health Services Appeal Authority<sup>5</sup> against a decision of a primary care trust<sup>6</sup> or local health board<sup>7</sup> to refuse to include him<sup>8</sup> in the ophthalmic list<sup>9</sup>. Such appeal is by way of redetermination<sup>10</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 I.e. the mandatory grounds of refusal under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7A(2): see PARA 301.

3 As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3.

4 As to the meaning of 'optician' see PARA 299 note 9.

5 As to the Family Health Services Appeal Authority see PARA 443.

6 As to primary care trusts see PARA 111.

7 As to local health boards see PARA 75.

8 I.e. pursuant to the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7: see PARA 300.

9 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 7C(1) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7C added by SI 2001/3739, SI 2002/1883; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7C(1) amended by SI 2002/2469, SI 2005/480, SI 2006/181). As to ophthalmic lists see PARA 299.

10 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7C(2) (as added: see note 9).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(iii) Ophthalmic Services/A. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 1977/(A) General Arrangements for General Ophthalmic Services/303. Regulations about conditional inclusion in ophthalmic list.

### **303. Regulations about conditional inclusion in ophthalmic list.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> may by regulations<sup>3</sup> provide: (1) that if a person<sup>4</sup> is to be included in a list of persons undertaking to provide general ophthalmic services<sup>5</sup>, he is to be subject, while he remains included in the list, to conditions determined by the primary care trust<sup>6</sup> in whose list he is included<sup>7</sup>; (2) for the primary care trust to vary that person's terms of service for the purpose of or in connection with the imposition of any such conditions<sup>8</sup>; (3) for the primary care trust to vary the conditions or impose different ones<sup>9</sup>; (4) for the consequences of failing to comply with a condition (including removal from the list)<sup>10</sup>; and (5) for the review by the primary care trust of any decision made by virtue of the regulations<sup>11</sup>. The imposition of conditions must be with a view to preventing any prejudice to the efficiency of the services in question<sup>12</sup>, or preventing any fraudulent acts or omissions<sup>13</sup>.

If regulations provide for a practitioner's removal from the list for breach of condition: (a) the regulations may provide that he may not withdraw from the list while the primary care trust is investigating whether there are grounds for exercising its power to remove him, or after the primary care trust has decided to remove him but before it has given effect to that decision<sup>14</sup>; and (b) the regulations must include provision: (i) requiring the practitioner to be given notice of any allegation against him<sup>15</sup>; (ii) giving him the opportunity of putting his case at a hearing before the primary care trust makes any decision as to his removal from the list<sup>16</sup>; and (iii) requiring him to be given notice of the primary care trust's decision and the reasons for it and of his right of appeal<sup>17</sup>.

If regulations provide as mentioned in heads (1) to (5) above, they must also provide for an appeal by the person in question to the Family Health Services Appeal Authority<sup>18</sup> against the primary care trust's decision<sup>19</sup>: (A) to impose conditions, or any particular condition<sup>20</sup>; (B) to vary a condition<sup>21</sup>; (C) to vary his terms of service<sup>22</sup>; (D) on any review of an earlier such decision of its<sup>23</sup>; (E) to remove him from the list for breach of condition<sup>24</sup>. The appeal must be by way of redetermination of the primary care trust's decision<sup>25</sup>. The regulations may provide for any such decision not to have effect until the determination by the Family Health Services Appeal Authority of any appeal against it, and must so provide in relation to a decision to remove a person from the list for breach of condition<sup>26</sup>.

The regulations may provide for the disclosure by a primary care trust, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about persons whose inclusion in the list is subject to conditions imposed under these provisions, and about the removal of such persons from such lists for breach of condition<sup>27</sup>.

1 The National Health Service Act 1977 s 43ZA is repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continues to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338. As to regulations making transitional provision in relation to England see PARA 329.

2 As to the Secretary of State see PARA 6 note 8.

- 3 As to the regulations made see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D; and PARA 304. See also the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005, SI 2005/480; and PARA 299.
- 4 As to the meaning of 'person' see PARA 17 note 2.
- 5 As to the meaning of 'general ophthalmic services' see PARA 295. As to such lists see PARA 299.
- 6 As to primary care trusts see PARA 111.
- 7 National Health Service Act 1977 s 43ZA(1)(a), (3)(c) (s 43ZA added by the Health and Social Care Act 2001 s 21; and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 18).
- 8 National Health Service Act 1977 s 43ZA(1)(b) (as added and amended: see note 7).
- 9 National Health Service Act 1977 s 43ZA(1)(c) (as added and amended: see note 7).
- 10 National Health Service Act 1977 s 43ZA(1)(d) (as added: see note 7).
- 11 National Health Service Act 1977 s 43ZA(1)(e) (as added and amended: see note 7).
- 12 National Health Service Act 1977 s 43ZA(2)(a) (as added: see note 7).
- 13 National Health Service Act 1977 s 43ZA(2)(b) (as added: see note 7). The acts or omissions referred to are those within s 49F(3)(a): see PARA 306.
- 14 National Health Service Act 1977 s 43ZA(4)(a) (as added and amended: see note 7). As to withdrawal from a list see PARA 305.
- 15 National Health Service Act 1977 s 43ZA(4)(b)(i) (as added: see note 7).
- 16 National Health Service Act 1977 s 43ZA(4)(b)(ii) (as added and amended: see note 7).
- 17 National Health Service Act 1977 s 43ZA(4)(b)(iii) (as added and amended: see note 7).
- 18 As to the Family Health Services Appeal Authority see PARA 443.
- 19 National Health Service Act 1977 s 43ZA(5) (as added and amended: see note 7).
- 20 National Health Service Act 1977 s 43ZA(5)(a) (as added: see note 7).
- 21 National Health Service Act 1977 s 43ZA(5)(b) (as added: see note 7).
- 22 National Health Service Act 1977 s 43ZA(5)(c) (as added: see note 7).
- 23 National Health Service Act 1977 s 43ZA(5)(d) (as added: see note 7).
- 24 National Health Service Act 1977 s 43ZA(5)(e) (as added: see note 7).
- 25 National Health Service Act 1977 s 43ZA(5) (as added and amended: see note 7).
- 26 National Health Service Act 1977 s 43ZA(6) (as added: see note 7).
- 27 National Health Service Act 1977 s 43ZA(7) (as added and amended: see note 7).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(iii) Ophthalmic Services/A. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 1977/(A) General Arrangements for General Ophthalmic Services/304. Conditional inclusion in ophthalmic list.

### **304. Conditional inclusion in ophthalmic list.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

A primary care trust<sup>2</sup> or local health board<sup>3</sup> may determine that if a person<sup>4</sup> is to be included in the list, he is to be subject, while he remains included in the list, to conditions imposed on his inclusion, having regard to the requirements<sup>5</sup> of preventing any prejudice to the efficiency of the services in question, or preventing any fraudulent acts or omissions<sup>6</sup>. A primary care trust or local health board may vary the terms of service<sup>7</sup> in relation to the applicant for the purpose of, or in connection with, the imposition of those conditions<sup>8</sup>. The primary care trust or local health board may of its own volition or at the request of the ophthalmic medical practitioner<sup>9</sup> or optician<sup>10</sup> concerned review any decision made under these provisions<sup>11</sup>. On such a review, the primary care trust or local health board may vary the conditions, impose different conditions or remove the ophthalmic medical practitioner or optician from the list<sup>12</sup>. Failure to comply with a condition may lead to removal of the ophthalmic medical practitioner or optician from the list<sup>13</sup>.

There is an appeal to the Family Health Services Appeal Authority<sup>14</sup> from any decision of the primary care trust or local health board: (1) to impose conditions, or any particular condition, on an ophthalmic medical practitioner or optician<sup>15</sup>; (2) to vary a condition<sup>16</sup>; (3) to vary his terms of service<sup>17</sup>; (4) on any review of an earlier such decision of the primary care trust or local health board<sup>18</sup>; (5) to remove him from the list for breach of condition<sup>19</sup>. The appeal is by way of redetermination of the primary care trust or local health board decision<sup>20</sup>. On appeal the Family Health Services Appeal Authority may make any decision which the primary care trust or local health board could have made<sup>21</sup>. Any decision of the primary care trust or local health board that may be the subject of an appeal does not have effect until the Family Health Services Appeal Authority has determined any appeal against it or any time for appeal has expired<sup>22</sup>.

A primary care trust or local health board must disclose to specified persons or bodies<sup>23</sup>, prescribed information<sup>24</sup> about ophthalmic medical practitioners or opticians whose inclusion in the list is subject to conditions imposed under these provisions and about the removal of such persons from the list for breach of such a condition<sup>25</sup>. The primary care trust or local health board must notify any person or body of such information if that person or body can establish that it is considering employing the ophthalmic medical practitioner or optician in a professional capacity and the primary care trust or local health board receives a written<sup>26</sup> request (including an electronic request) from that person or body to do so<sup>27</sup>. Where the primary care trust or local health board has notified any of the specified persons or bodies or other persons or bodies of such information, it may in addition notify that person or body of any evidence that was considered, including representations of the ophthalmic medical practitioner or optician if so requested<sup>28</sup>. Where a primary care trust or local health board is notified by the Family Health Services Appeal Authority that it has imposed a national disqualification<sup>29</sup> on an ophthalmic medical practitioner or optician whom the trust or board had removed from its ophthalmic list, it must notify certain such persons or bodies<sup>30</sup>. Where a decision is changed on review or appeal, or a suspension lapses, the primary care trust or local health board must notify any person or body that was notified of the original decision of the later decision<sup>31</sup>.

<sup>1</sup> Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue

to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to primary care trusts see PARA 111.

3 As to local health boards see PARA 75.

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the requirements of the National Health Service Act 1977 s 43ZA(2): see PARA 303.

6 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 7D(1) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(1)-(4), (6), (8)-(15), (17)-(20) amended by SI 2005/480). As to ophthalmic lists see PARA 299.

7 As to the terms of service see PARA 323.

8 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(2) (as added and amended: see note 6).

9 As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3.

10 As to the meaning of 'optician' see PARA 299 note 9.

11 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(3) (as added and amended: see note 6). An ophthalmic medical practitioner or optician may not request a review of a primary care trust or local health board decision until the expiry of a three month period beginning with the date the trust or board includes the ophthalmic medical practitioner or optician in the list: reg 7D(4) (as so added and amended). After a review has taken place, the ophthalmic medical practitioner or optician cannot request another review before the expiry of six months from the date of the decision on the previous review: reg 7D(5) (as so added). As to the meaning of 'month' see PARA 28 note 16.

12 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(6) (as added and amended: see note 6).

13 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(7) (as added: see note 6).

14 As to the Family Health Services Appeal Authority see PARA 443.

15 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(8)(a) (as added: see note 6).

16 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(8)(b) (as added: see note 6).

17 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(8)(c) (as added: see note 6).

18 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(8)(d) (as added and amended: see note 6).

19 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(8)(e) (as added: see note 6).

20 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(8) (as added and amended: see note 6).

21 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(9) (as added and amended: see note 6). Where the decision of the Family Health Services Appeal Authority on appeal is that conditions be imposed on the ophthalmic medical practitioner or optician, whether or not those conditions are identical with the conditions imposed by the primary care trust or local health board, the trust or board must ask the ophthalmic medical practitioner or optician to notify it within 28 days of the decision (or such longer period as the trust or board may agree) whether he wishes to be included on the ophthalmic list subject to these conditions: reg 7D(10) (as so added and amended). If the ophthalmic medical practitioner or

optician notifies the primary care trust or local health board that he does wish to be included in the ophthalmic list subject to the conditions, the trust or board must so include him: reg 7D(11) (as so added and amended).

22 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(12) (as added and amended: see note 6).

23 As to the specified persons and bodies see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(15) (as added and amended (see note 6); and further amended by SI 2002/601, SI 2006/181, SI 2006/635).

24 As to the prescribed information see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(15) (as added and amended (see note 6); and further amended by SI 2006/181).

25 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(13) (as added and amended: see note 6). The primary care trust or local health board must send to the ophthalmic medical practitioner or optician concerned a copy of any information about him provided to the specified persons or bodies, and any correspondence with those persons relating to that information: reg 7D(17) (as so added amended; and further amended by SI 2002/601).

26 As to the meaning of 'written' see PARA 7 note 2.

27 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(16) (reg 7D as added (see note 6); reg 7D(16) substituted by SI 2002/601 and amended by SI 2005/480).

28 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(18) (as added and amended: see note 6).

29 As to national disqualification see PARA 313.

30 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(19) (as added and amended: see note 6).

31 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D(20) (as added and amended: see note 6).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

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### **305. Withdrawal from ophthalmic list.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

Where a contractor<sup>2</sup> gives notice in writing<sup>3</sup> to the primary care trust<sup>4</sup> or local health board<sup>5</sup> that he wishes to withdraw from the ophthalmic list<sup>6</sup>, his name must be removed from the list at the expiration of three months<sup>7</sup> from the date of that notice or of such shorter period as the trust or board may agree<sup>8</sup>. An ophthalmic medical practitioner<sup>9</sup> or optician<sup>10</sup>, who applies for inclusion in a supplementary list<sup>11</sup>, must give notice<sup>12</sup> to the trust or board, as soon as practicable thereafter, that he intends to withdraw from its ophthalmic list if his name is included in the supplementary list of any primary care trust or local health board<sup>13</sup>.

Regulations may provide for circumstances in which a practitioner<sup>14</sup> may not withdraw from a list in which he is included<sup>15</sup>. Where a primary care trust or local health board is investigating an ophthalmic medical practitioner or optician: (1) for the purpose of deciding whether or not to exercise its powers<sup>16</sup> to remove or suspend him from the list<sup>17</sup>; (2) in order to see whether the ophthalmic medical practitioner or optician has failed to comply with a condition imposed<sup>18</sup> on his inclusion in the list so as to justify his removal from the list<sup>19</sup>; or (3) who has been suspended<sup>20</sup> from the list<sup>21</sup>, the ophthalmic medical practitioner or optician may not withdraw from any list kept by any trust or board in which he is included, except where the Secretary of State<sup>22</sup> has given his consent, until the matter has been finally determined by the trust or board<sup>23</sup>. Where a trust or board has decided to exercise its powers to remove an ophthalmic medical practitioner or optician from a list, or remove him for breach of a condition imposed on inclusion, but has not yet given effect to its decision, the ophthalmic medical practitioner or optician may not withdraw from any list kept by any trust or board in which he is included, except where the Secretary of State has given his consent<sup>24</sup>. Where a trust or board has suspended an ophthalmic medical practitioner or optician<sup>25</sup>, he may not withdraw from any list kept by any trust or board in which he is included, except where the Secretary of State has given his consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the trust or board<sup>26</sup>.

The primary care trust or local health board must not agree to a contractor's withdrawal from the ophthalmic list unless and until it is satisfied that satisfactory arrangements have been made for the completion of any general ophthalmic services<sup>27</sup> which he has undertaken to provide<sup>28</sup>.

1 The National Health Service Act 1977 s 49P is repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continues to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'contractor' see PARA 295 note 13.

3 As to the meaning of 'writing' see PARA 7 note 2.

- 4 As to primary care trusts see PARA 111.
- 5 As to local health boards see PARA 75.
- 6 As to the ophthalmic list see PARA 299.
- 7 As to the meaning of 'month' see PARA 28 note 16.
- 8 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 8(1) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(1) amended by SI 2001/3739; SI 2002/1883; SI 2002/2469).
- 9 As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3.
- 10 As to the meaning of 'optician' see PARA 299 note 9.
- 11 As to supplementary lists see PARA 299.
- 12 Such a notice may not be withdrawn once the ophthalmic medical practitioner's or optician's name is included in a supplementary list: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(5) (reg 8(1A), (4), (5) added by SI 2005/480; SI 2006/181).
- 13 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(1A) (as added: see note 12). The trust or board must remove the ophthalmic medical practitioner or optician's name from its ophthalmic list as soon as it confirms that his name is included in a supplementary list: see reg 8(4) (as so added).
- 14 As to the meaning of 'practitioner' see PARA 306 note 3.
- 15 See the National Health Service Act 1977 s 49P (added by the Health and Social Care Act 2001 s 25; and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 27, the National Health Service (Consequential Provisions) Act 2006 Sch 4).
- 16 Ie under the National Health Service Act 1977 s 49F (see PARA 306), s 49G (see PARA 308) or s 49I (see PARA 309).
- 17 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(2)(a) (reg 8(2) substituted, (2A), (2B) added, by SI 2001/3739; SI 2002/1883).
- 18 Ie under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 7D: see PARA 304.
- 19 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(2)(b) (as substituted: see note 17).
- 20 Ie under the National Health Service Act 1977 s 49I(1)(a): see PARA 309.
- 21 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(2)(c) (as substituted: see note 17).
- 22 As to the Secretary of State see PARA 6 note 8. In relation to Wales the powers of the Secretary of State under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, are exercisable by the Welsh Ministers: see the National Health Service (Wales) Act 2006 ss 71-79, 206(1); and PARA 338. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.
- 23 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(2) (as substituted (see note 17); and amended by SI 2002/2469).
- 24 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(2A) (as added (see note 17); and amended by SI 2002/601, SI 2002/2469).
- 25 Ie under the National Health Service Act 1977 s 49I(1)(b): see PARA 309.
- 26 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(2B) (as added (see note 17); and amended by SI 2002/601, SI 2002/2469).
- 27 As to the meaning of 'general ophthalmic services' see PARA 295 note 13.

28 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 8(3) (amended by SI 2001/3739; SI 2002/1883; SI 2002/2469).

**UPDATE**

**295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.



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### **306. Disqualification of practitioners.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

If it appears to a primary care trust<sup>2</sup> that any of the following conditions is established in relation to a person<sup>3</sup> included in a list of ophthalmic opticians<sup>4</sup> undertaking to provide general ophthalmic services<sup>5</sup>, it may or, in unsuitability cases must<sup>6</sup>, decide to remove him from that list<sup>7</sup>.

The first condition is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is known as an 'efficiency case')<sup>8</sup>. The second condition is that the person concerned has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme<sup>9</sup> by securing or trying to secure for himself or another any financial or other benefit<sup>10</sup>, and knew that he or (as the case may be) the other was not entitled to the benefit<sup>11</sup> (and such a case is known as a 'fraud case')<sup>12</sup>. The third condition is that the person concerned is unsuitable to be included in the list (and such a case is known as an 'unsuitability case')<sup>13</sup>.

Where a primary care trust or local health board is considering removing an ophthalmic medical practitioner or optician from a list (other than in cases in which it must remove him<sup>14</sup>) it must follow the prescribed procedure<sup>15</sup>. The primary care trust or local health board must state which condition (or conditions) it is relying on when removing a practitioner from a list<sup>16</sup>.

1 The National Health Service Act 1977 ss 49F, 49H, 49O, 49Q are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see notes 7-9, 12, 16, and the text to notes 14-15) will lapse in relation to England but will continue to apply in relation to Wales: see para 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to primary care trusts see PARA 111.

3 Such a person is referred to in the National Health Service Act 1977 ss 49F-49R as a 'practitioner': s 49F(1), (5) (ss 49F, 49H, 49O, 49Q added by the Health and Social Care Act 2001 s 25). As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'ophthalmic optician' see PARA 295 note 7. As to the ophthalmic list see PARA 299.

5 National Health Service Act 1977 s 49F(1)(d) (as added: see note 3). As to the meaning of 'general ophthalmic services' see PARA 295.

6 In unsuitability cases, the primary care trust must remove the practitioner from the list in prescribed circumstances: National Health Service Act 1977 s 49F(6) (as added (see note 3); and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 21(a)). 'Prescribed' means prescribed by regulations: see the National Health Service Act 1977 s 128(1). As to the provision made see PARA 307.

7 National Health Service Act 1977 s 49F(1) (as added (see note 3); and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 21(a); the National Health Service (Consequential Provisions) Act 2006 Sch 4). Any such decision by a primary care trust must be reached in accordance with regulations made by the Secretary of State: see the National Health Service Act 1977 s 49Q (as so added; and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 28; the National Health Service (Consequential Provisions) Act 2006 Sch 4). As to the Secretary of State see PARA 6 note 8. In making any such decision, a primary care trust or local health board must take into account the effect of all relevant incidents and offences relating to the ophthalmic medical practitioner or optician of which it is aware, whichever condition it relies on: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9B(7) (reg 9B added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9B(7) amended by SI 2002/2469). Where a primary care trust or local health board removes an ophthalmic medical practitioner or optician under the National Health Service Act 1977 s 49F it must notify the prescribed persons of that decision: see s 49O (as so added); National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9D (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181, SI 2006/635). As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3. As to the meaning of 'optician' see PARA 299 note 9. As to suspension pending appeal see PARA 310. As to local health boards see PARA 75.

8 National Health Service Act 1977 s 49F(2) (as added: see note 3). As to the criteria to be applied in relation to decisions for removal in efficiency cases see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9B(5), (6) (reg 9B as added (see note 7); reg 9B(5) substituted in relation to England by SI 2005/480, and in relation to Wales by SI 2006/181; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9B(6) amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2005/502, SI 2006/181).

9 Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme: National Health Service Act 1977 s 49F(9) (as added: see note 3). 'Health scheme' means any of the health services under the National Health Service Act 2006 s 1(1) (see PARA 10) or any corresponding enactment extending to Scotland or Northern Ireland, and any prescribed scheme; and regulations may prescribe any scheme for these purposes which appears to the Secretary of State to be a health or medical scheme paid for out of public funds: National Health Service Act 1977 s 49F(8) (as so added); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). In addition to the services covered by the definition of 'health scheme', the following are also health schemes: (1) health services, including medical and surgical treatment, provided by Her Majesty's Forces; (2) services provided by port health authorities constituted under the Public Health (Control of Disease) Act 1984 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 102); (3) health services provided to a prisoner in the care of the medical officer or any other such officer of a prison appointed for the purposes of the Prison Act 1952 s 7 (see **PRISONS** vol 36(2) (Reissue) PARA 515); (4) publicly-funded health services provided by or on behalf of any organisation anywhere in the world: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9A (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883). In relation to Wales the powers of the Secretary of State under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, are exercisable by the Welsh Ministers: see the National Health Service (Wales) Act 2006 ss 71-79, 206(1); and PARA 338. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

10 National Health Service Act 1977 s 49F(3)(a) (as added: see note 3).

11 National Health Service Act 1977 s 49F(3)(b) (as added: see note 3).

12 National Health Service Act 1977 s 49F(3) (as added: see note 3). A practitioner is to be treated as meeting this condition if another person, because of an act or omission of his occurring in the course of providing any general ophthalmic services on the practitioner's behalf, meets this condition, and the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within s 49F(3)(a) (see the text to note 10) occurring in the course of the provision of those services on his behalf: s 49H(2) (as so added). Where the practitioner is a body corporate, the body corporate is to be treated as meeting the second or third condition referred to in s 49F(3) and (4) (see the text to note 13): (1) in the case of an ophthalmic optician not referred to in head (2) below, if any director meets that condition (whether or not he first did so when he was a director); and (2) in the case of an ophthalmic optician which is a limited liability partnership, if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person): s 49H(1) (as so added; and amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 14 Pt 4). As to the criteria to be applied in relation to decisions for removal in fraud cases see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9B(3), (4) (reg 9B as added (see note 7); reg 9B(3) substituted in relation to England by SI 2005/480, and in relation to Wales by SI 2006/181; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9B(4) amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181).

13 National Health Service Act 1977 s 49F(4) (as added: see note 3). See also note 12. As to the criteria to be applied in relation to decisions for removal in unsuitability cases see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9B(1), (2) (reg 9B as added (see note 7); reg 9B(1) substituted in relation to England by SI 2005/480, and in relation to Wales by SI 2006/181; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9B(2) amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181).

14 In cases to which the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C applies: see PARA 307.

15 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9E (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181).

16 National Health Service Act 1977 s 49F(7) (as added (see note 3); and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 21(a)); National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9B(8) (reg 9B as added (see note 7); reg 9B(8) amended by SI 2002/2469).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

### **306 Disqualification of practitioners**

TEXT AND NOTE 5--National Health Service Act 1977 s 49F(1)(d) amended: Health Act 2006 Sch 8 para 18.

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### **307. Removal from ophthalmic list.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

Where a primary care trust<sup>2</sup> or local health board<sup>3</sup> has determined that a contractor<sup>4</sup>: (1) has died<sup>5</sup>; (2) in the case of a corporate optician<sup>6</sup>, has been dissolved or ceased trading<sup>7</sup>; (3) has otherwise ceased from being a doctor or optician<sup>8</sup>; or (4) has had his name included in the supplementary list of any primary care trust or local health board<sup>9</sup>, it must remove his name from the ophthalmic list<sup>10</sup>. Where a trust or board determines that a contractor whose name has been included for the preceding six months<sup>11</sup> in its ophthalmic list has not during that period provided general ophthalmic services<sup>12</sup> for persons in its area, it must remove his name from the ophthalmic list<sup>13</sup>. Before making such a determination relating to a contractor, the trust or board must give him 28 days' notice of its intention to do so<sup>14</sup>, afford him an opportunity to make representations to it in writing<sup>15</sup>, or, if he so wishes, orally to a sub-committee which must be appointed by the trust or board for the purpose and at least one-third of the members of which must be from a panel nominated by the appropriate local committee<sup>16</sup>, and consult that committee<sup>17</sup>. Nothing in the above provisions prejudices the right of a person<sup>18</sup> to have his name included again in the ophthalmic list<sup>19</sup>.

The primary care trust or local health board must remove the ophthalmic medical practitioner or optician from the ophthalmic list where it becomes aware that the ophthalmic medical practitioner or optician<sup>20</sup>: (a) has been convicted in the United Kingdom of murder<sup>21</sup>; (b) has been convicted in the United Kingdom since 13 December 2001 of a criminal offence and sentenced to a term of imprisonment of over six months<sup>22</sup>; (c) is subject to a national disqualification<sup>23</sup>; (d) in the case of an ophthalmic medical practitioner, is the subject of (i) a direction given<sup>24</sup> by the professional conduct committee of the General Medical Council in respect of professional misconduct and criminal offences<sup>25</sup>; (ii) an order or direction for immediate suspension made<sup>26</sup> by that committee<sup>27</sup>; or (iii) from 1 November 2004<sup>28</sup>, a direction<sup>29</sup> by a fitness to practise panel of the General Medical Council for erasure or immediate suspension<sup>30</sup>; (e) in the case of an optician, is the subject of a suspension order<sup>31</sup>; or (f) in the case of an optician, is the subject of a direction made<sup>32</sup> by the fitness to practise committee of the General Optical Council other than in a health case<sup>33</sup> to erase his name from the appropriate register or suspend his registration<sup>34</sup>. In cases falling within heads (a) to (f) above the trust or board must notify the ophthalmic medical practitioner or optician immediately that he has been removed from the list<sup>35</sup>.

Where an ophthalmic medical practitioner or optician has been removed from its ophthalmic list by a primary care trust or local health board on the grounds that he had been convicted of a criminal offence, and that conviction is overturned on appeal, it may agree to include him in its ophthalmic list without a full application if it is satisfied that there are no other matters that need to be considered<sup>36</sup>, and has received an undertaking from him to comply with the statutory requirements<sup>37</sup>. If the conviction is reinstated on a further appeal, the previous determination of the primary care trust to remove that ophthalmic medical practitioner or optician from its ophthalmic list once again has effect<sup>38</sup>.

<sup>1</sup> Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue

to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to primary care trusts see PARA 111.

3 As to local health boards see PARA 75.

4 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 9(1) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(1) amended by SI 2001/3739, SI 2002/1883, SI 2002/2469). As to the meaning of 'contractor' see PARA 295 note 13.

5 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(1)(a) (amended by SI 2005/480; SI 2006/181).

6 As to the meaning of 'corporate optician' see PARA 299 note 9.

7 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(1)(aa) (added by SI 2005/480; SI 2006/181).

8 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(1)(b). As to the meaning of 'doctor' see PARA 295 note 19. As to the meaning of 'optician' see PARA 299 note 9.

9 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(1)(c) (amended by SI 2005/480; SI 2006/181). As to supplementary lists see PARA 299.

10 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(1). Except in a case to which head (1) in the text applies, it must also notify him immediately that he has been removed from the list: reg 9(1) (amended by SI 2005/480; SI 2006/181). Any document which is required or authorised to be given to a contractor in respect of his removal from the ophthalmic list may be given by delivering it to him or by sending it by recorded delivery service to his usual or last known place of business as recorded in the ophthalmic list: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(6). As to the ophthalmic list see PARA 299.

11 As to the meaning of 'month' see PARA 28 note 16.

12 As to the meaning of 'general ophthalmic services' see PARA 295 note 13.

13 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(2) (amended by SI 2001/3739; SI 2002/1883; SI 2002/2469). In calculating the period of six months, a trust or board must disregard any period during which the contractor provided no general ophthalmic services by reason only that he was suspended from the ophthalmic list: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(2A) (added by SI 1996/705; and amended by SI 2002/2469; SI 2005/480; SI 2006/181). As to suspension from the list see PARAS 309, 310. No such determination may be made in respect of any contractor who is called into whole-time service in the armed forces of the Crown in a national emergency as a volunteer or otherwise; or compulsory whole-time service in those forces, including service resulting from any reserve liability or any equivalent service by a person liable for whole-time service in those forces, until six months after the completion of that service: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(5) (amended by SI 2005/480; SI 2006/181).

14 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(3)(a). See also note 10.

15 As to the meaning of 'writing' see PARA 7 note 2.

16 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(3)(b) (amended by SI 2001/3739; SI 2002/1883). 'Appropriate local committee' means, where the contractor is an ophthalmic medical practitioner, the local medical committee and, where the contractor is an optician, the local optical committee: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(7). As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3. As to local medical committees and local optical committees see PARA 327.

17 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(3)(c).

18 As to the meaning of 'person' see PARA 17 note 2.

19 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(4).

20 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A) (as added: see note 4), 9C(1) (reg 9C added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1) amended by SI 2002/2469).

21 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1)(a) (as added: see note 20). As to the meaning of 'United Kingdom' see PARA 15 note 8. As to murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 89.

22 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1)(b) (as added: see note 20).

23 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1)(c) (reg 9C as added (see note 20); reg 9C(1)(c)-(e) added in relation to England by SI 2005/480, and in relation to Wales by SI 2006/81). As to national disqualification see para 313.

24 Ie under the Medical Act 1983 s 36(1)(i) or (ii) (as originally enacted; repealed).

25 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1)(d)(i) (as added: see note 23).

26 Ie under the Medical Act 1983 s 38(1) (as originally enacted; repealed).

27 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1)(d)(ii) (as added: see note 23).

28 Ie after the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13. The Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13 came into force for all purposes on 1 November 2004: see the London Gazette (1 July 2003, 2 July 2004, 8 October 2004).

29 Ie under the Medical Act 1983 s 35D(2)(a) or (b), (5)(a) or (b), (10)(a) or (b), or (12)(a) or (b), or s 38(1): see **MEDICAL PROFESSIONS**.

30 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1)(d)(iii) (as added: see note 23).

31 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1)(e) (as added: see note 23). The suspension order referred to is one under the Opticians Act 1989 s 17: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 846 et seq.

32 Ie under the Opticians Act 1989 s 13F(3)(a) or (b), (7)(a) or (b) or (13)(a) or (b): see **MEDICAL PROFESSIONS**.

33 'Health case' has the meaning given to it in the Opticians Act 1989 s 13G(6) (see **MEDICAL PROFESSIONS**): National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1A) (reg 9C (as added: see note 20); reg 9C(1)(f), (1A) added in relation to England by SI 2005/1481, and in relation to Wales by SI 2007/122).

34 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(1)(f) (as added: see note 33).

35 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9C(2) (as added: see note 20).

36 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A) (as added: see note 4), 9I(1)(a) (reg 9I added by SI 2005/480, SI 2006/181).

37 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9I(1)(b) (as added: see note 36). The statutory requirements are those of the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975.

38 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9I(2) (as added: see note 36).

## UPDATE

**295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

**307 Removal from ophthalmic list**

TEXT AND NOTES 28-30--Correction. In head (d)(iii), for '1 November 2004' read 'the coming into force of the Medical Act 1983 (Amendment) Order 2002, SI 2002/3135, art 13'. SI 2002/3135 art 13 is in force for certain purposes only: see London Gazette, 1 July 2003, 2 July 2004, 8 October 2004, and 21 August 2009.

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### 308. Contingent removal.

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

In an efficiency case or a fraud case<sup>2</sup>, the primary care trust<sup>3</sup> may, instead of deciding to remove a practitioner<sup>4</sup> from its list, decide to remove him contingently<sup>5</sup>. If it so decides, the primary care trust must impose such conditions as it may decide on his inclusion in the list with a view to: (1) removing any prejudice to the efficiency of the services in question (in an efficiency case)<sup>6</sup>; or (2) preventing further detrimental acts or omissions<sup>7</sup> (in a fraud case)<sup>8</sup>.

If the primary care trust determines that the practitioner has failed to comply with a condition, it may decide to: (a) vary the conditions, or impose different conditions<sup>9</sup>; or (b) remove him from the list<sup>10</sup>. The primary care trust may decide to vary the terms of service<sup>11</sup> of the person<sup>12</sup> concerned for the purpose of or in connection with the imposition of any conditions by virtue of these provisions<sup>13</sup>.

Where a primary care trust is considering contingently removing an ophthalmic medical practitioner or optician it must follow the prescribed procedure<sup>14</sup>.

1 The National Health Service Act 1977 ss 49G, 49O, 49Q are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see notes 5, 14) will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to efficiency cases and fraud cases see PARA 306.

3 As to primary care trusts see PARA 111.

4 As to the meaning of 'practitioner' see PARA 306 note 3.

5 National Health Service Act 1977 s 49G(1) (ss 49G, 49O, 49Q added by the Health and Social Care Act 2001 s 25; National Health Service Act 1977 s 49G amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 21(b); National Health Service (Consequential Provisions) Act 2006 Sch 4). Where a primary care trust contingently removes an ophthalmic medical practitioner or optician under the National Health Service Act 1977 s 49G it must notify the prescribed persons of that decision: see s 49O (as so added; and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 4); National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9D (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181, SI 2006/635). As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3. As to the meaning of 'optician' see PARA 299 note 9. As to the review of decisions see PARA 311.

6 National Health Service Act 1977 s 49G(2)(a) (as added: see note 5).

7 Ie within the National Health Service Act 1977 s 49F(3)(a): see PARA 306.

8 National Health Service Act 1977 s 49G(2)(b) (as added: see note 5).

9 National Health Service Act 1977 s 49G(3)(a) (as added and amended: see note 5).



- 10 National Health Service Act 1977 s 49G(3)(b) (as added and amended: see note 5).
- 11 As to terms of service see PARA 323.
- 12 As to the meaning of 'person' see PARA 17 note 2.
- 13 National Health Service Act 1977 s 49G(4) (as added and amended: see note 5).
- 14 See the National Health Service Act 1977 s 49Q (as added (see note 5); and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 28, National Health Service (Consequential Provisions) Act 2006 Sch 4); the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9E (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

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### **309. Suspension.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

If the primary care trust<sup>2</sup> is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a practitioner<sup>3</sup> from its list<sup>4</sup>: (1) while it decides whether or not to exercise its powers<sup>5</sup> to remove or contingently remove a person<sup>6</sup> from the list (other than in circumstances falling within head (2) below)<sup>7</sup>; or (2) while it waits for a decision affecting the practitioner of a court or of a body<sup>8</sup> which regulates (a) the practitioner's profession<sup>9</sup>; (b) the profession of a person providing general ophthalmic services<sup>10</sup> on the practitioner's behalf<sup>11</sup>; (c) if the practitioner is a body corporate, the profession of one of its directors or, as the case may be, one of the body of persons controlling it or (if it is a limited liability partnership) one of its members<sup>12</sup>, or one of that regulatory body's committees<sup>13</sup>.

In a case falling within head (1) above, the primary care trust must specify how long the period of suspension is to be<sup>14</sup>; and in a case falling within head (2) above, the primary care trust may specify that the practitioner is to remain suspended after the decision referred to there for an additional period which the trust must specify<sup>15</sup>. In either case before that period expires the primary care trust may extend, or further extend, the suspension for a further specified period<sup>16</sup>, or if that period has expired, may impose a further suspension, for a period which it must specify<sup>17</sup>. The period of suspension (in a case to which head (1) applies) or the additional period (in a case in which head (2) applies), including in both cases the period of any further suspension<sup>18</sup>, may not exceed six months<sup>19</sup> in aggregate, except: (i) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period)<sup>20</sup>; (ii) if, on the application of the primary care trust, the Family Health Services Appeal Authority<sup>21</sup> orders accordingly before the expiry of the period of suspension<sup>22</sup>; or (iii) if the primary care trust has applied under head (ii) above before the expiry of the period of suspension, but the Family Health Services Appeal Authority has not made an order by the time it expires, in which case it continues until the Family Health Services Appeal Authority has made an order<sup>23</sup>. If the Family Health Services Appeal Authority does so order, it must specify the date on which the period of suspension is to end<sup>24</sup>, or an event beyond which it is not to continue<sup>25</sup>. The Family Health Services Appeal Authority may, on the application of the primary care trust, make a further order<sup>26</sup> at any time while the period of suspension pursuant to the earlier order is still continuing<sup>27</sup>.

While a practitioner is suspended he is to be treated as not being included in the list from which he has been suspended even though his name appears in it<sup>28</sup>. The Secretary of State may make regulations providing for payments to practitioners who are suspended<sup>29</sup>.

1 The National Health Service Act 1977 ss 49I, 49K, 49O, 49Q are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see notes 4, 29) will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

- 2 As to primary care trusts see PARA 111.
- 3 As to the meaning of 'practitioner' see PARA 306 note 3.
- 4 National Health Service Act 1977 s 49I(1) (ss 49I, 49K, 49O, 49Q added by the Health and Social Care Act 2001 s 25; National Health Service Act 1977 s 49I amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 21(b); National Health Service (Consequential Provisions) Act 2006 Sch 4). As to ophthalmic lists see PARA 299. Any such decision by a primary care trust must be reached in accordance with regulations made by the Secretary of State: see the National Health Service Act 1977 s 49Q (as so added; and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 28, National Health Service (Consequential Provisions) Act 2006 Sch 4). As to the Secretary of State see PARA 6 note 8. As to the procedure to be followed by a primary care trust before reaching such a decision see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9F (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/2469, SI 2005/480, SI 2006/181). Where a primary care trust suspends an ophthalmic medical practitioner or optician under the National Health Service Act 1977 s 49I, or where such a suspension lapses, it must notify the prescribed persons of that decision: see s 49O (as so added); National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9D (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181, SI 2006/635). The National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9D applies also to local health boards in Wales: see PARA 338. As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3. As to the meaning of 'optician' see PARA 299 note 9. As to the review of decisions see PARA 311.
- 5 Ie under the National Health Service Act 1977 s 49F (see PARA 306) or s 49G (see PARA 308).
- 6 As to the meaning of 'person' see PARA 17 note 2.
- 7 National Health Service Act 1977 s 49I(1)(a) (as added: see note 4).
- 8 The references to a court or regulatory body are to a court or such a body anywhere in the world: National Health Service Act 1977 s 49I(2) (as added: see note 4).
- 9 National Health Service Act 1977 s 49I(1)(b)(i) (as added: see note 4).
- 10 As to the meaning of 'general ophthalmic services' see PARA 295.
- 11 National Health Service Act 1977 s 49I(1)(b)(ii) (as added: see note 4).
- 12 National Health Service Act 1977 s 49I(1)(b)(iii) (as added: see note 4).
- 13 National Health Service Act 1977 s 49I(1)(b) (as added: see note 4).
- 14 National Health Service Act 1977 s 49I(3) (as added and amended: see note 4).
- 15 National Health Service Act 1977 s 49I(4) (as added and amended: see note 4).
- 16 National Health Service Act 1977 s 49I(5)(a) (as added: see note 4).
- 17 National Health Service Act 1977 s 49I(5)(b) (as added: see note 4).
- 18 Ie imposed under the National Health Service Act 1977 s 49I(5)(b): see the text to note 17.
- 19 As to the meaning of 'month' see PARA 28 note 16.
- 20 National Health Service Act 1977 s 49I(6)(a) (as added: see note 4). 'Prescribed' means prescribed by regulations: s 128(1). At the date at which this volume states the law no such regulations had been made.
- 21 As to the Family Health Services Appeal Authority see PARA 443.
- 22 National Health Service Act 1977 s 49I(6)(b) (as added and amended: see note 4).
- 23 National Health Service Act 1977 s 49I(6)(c) (as added and amended: see note 4).
- 24 National Health Service Act 1977 s 49I(7)(a) (as added: see note 4).
- 25 National Health Service Act 1977 s 49I(7)(b) (as added: see note 4).
- 26 Ie complying with the National Health Service Act 1977 s 49I(7): see the text to notes 24-25.

27 National Health Service Act 1977 s 49I(8) (as added and amended: see note 4).

28 National Health Service Act 1977 s 49K (as added: see note 4).

29 National Health Service Act 1977 s 49I(9) (as added: see note 4). Those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State: s 49I(10) (as so added). As to the provision made see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 12A (added by SI 1996/705; substituted in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2006/1550).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

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### **310. Suspension pending appeal.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

If the primary care trust<sup>2</sup> decides<sup>3</sup> to remove a practitioner<sup>4</sup> from a list<sup>5</sup>, it may also decide to suspend the practitioner from the list pending any appeal by him, if it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest<sup>6</sup>. If the primary care trust does so suspend the practitioner, the suspension has effect from the date when the primary care trust gave him notice of the suspension<sup>7</sup>. The suspension has effect until its revocation<sup>8</sup> or, if later, until the expiry of the period within which an appeal may be made<sup>9</sup>, or, if the practitioner appeals<sup>10</sup>, until the Family Health Services Appeal Authority<sup>11</sup> has disposed of the appeal<sup>12</sup>.

The primary care trust may revoke a suspension imposed by it<sup>13</sup>. If the practitioner appeals<sup>14</sup> against the primary care trust's decision to remove him from the list, the Family Health Services Appeal Authority may also revoke a suspension imposed on him<sup>15</sup>.

While a practitioner is suspended he is to be treated as not being included in the list from which he has been suspended even though his name appears in it<sup>16</sup>. The Secretary of State may make regulations providing for payments to practitioners who are suspended<sup>17</sup>.

1 The National Health Service Act 1977 ss 49J, 49K, 49O, 49Q are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see note 6) will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to primary care trusts see PARA 111.

3 Ie under the National Health Service Act 1977 s 49F: see PARA 306.

4 As to the meaning of 'practitioner' see PARA 306 note 3.

5 National Health Service Act 1977 s 49J(1) (ss 49J, 49K, 49O, 49Q added by the Health and Social Care Act 2001 s 25; National Health Service Act 1977 s 49J(1), (3), (5), (6) amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 22; National Health Service (Consequential Provisions) Act 2006 Sch 4). As to ophthalmic lists see PARA 299.

6 National Health Service Act 1977 s 49J(2) (as added: see note 5). Any such decision by a primary care trust must be reached in accordance with regulations made by the Secretary of State: see the National Health Service Act 1977 s 49Q (as so added; and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 28). As to the Secretary of State see PARA 6 note 8. As to the procedure to be followed by a primary care trust or a local health board before reaching such a decision see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9F (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/2469, SI 2005/480, SI 2006/181). As to local health boards see PARA 75. Where a primary care trust suspends an ophthalmic medical practitioner or optician under the National Health Service Act 1977 s 49J, or where such a suspension lapses, it must notify the prescribed persons of that decision: see s 49O (as so added); National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9D (added in relation to

England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181, SI 2006/635). As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3. As to the meaning of 'optician' see PARA 299 note 9.

- 7 National Health Service Act 1977 s 49J(3) (as added and amended: see note 5).
- 8 le under the National Health Service Act 1977 s 49J(5) or (6): see the text to notes 13-15.
- 9 le the period of 28 days referred to in the National Health Service Act 1977 s 49M(1): see PARA 312.
- 10 le under the National Health Service Act 1977 s 49M: see PARA 312.
- 11 As to the Family Health Services Appeal Authority see PARA 443.
- 12 National Health Service Act 1977 s 49J(4) (as added: see note 5).
- 13 National Health Service Act 1977 s 49J(5) (as added and amended: see note 5).
- 14 le under the National Health Service Act 1977 s 49M: see PARA 312.
- 15 National Health Service Act 1977 s 49J(6) (as added and amended: see note 5).
- 16 National Health Service Act 1977 s 49K (as added: see note 5).
- 17 le the provisions of the National Health Service Act 1977 s 49I(9), (10) (see PARA 309) apply for the purposes of s 49J as they apply for the purposes of that section: s 49J(7) (as added: see note 5).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(iii) Ophthalmic Services/A. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 1977/(A) General Arrangements for General Ophthalmic Services/311. Review of decisions.

### **311. Review of decisions.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

The primary care trust<sup>2</sup> may, and (except in prescribed cases<sup>3</sup>) if requested in writing<sup>4</sup> to do so by the practitioner<sup>5</sup> must, review a contingent removal<sup>6</sup> or a suspension<sup>7</sup> (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the Family Health Services Appeal Authority<sup>8</sup>, or a suspension imposed<sup>9</sup> pending appeal)<sup>10</sup>. The practitioner may not request a review before the expiry of the period of three months<sup>11</sup> beginning with the date of the primary care trust's decision to suspend or contingently remove him, or (as appropriate)<sup>12</sup> six months beginning with the date of the decision on the previous review<sup>13</sup>.

On such a review, the primary care trust may<sup>14</sup>: (1) confirm the contingent removal or the suspension<sup>15</sup>; (2) in the case of a suspension, terminate it<sup>16</sup>; (3) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list<sup>17</sup>.

1 The National Health Service Act 1977 ss 49L, 49O, 49Q are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see note 10) will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to primary care trusts see PARA 111.

3 'Prescribed' means prescribed by regulations: National Health Service Act 1977 s 128(1). At the date at which this volume states the law no such regulations had been made.

4 As to the meaning of 'writing' see PARA 7 note 2.

5 As to the meaning of 'practitioner' see PARA 306 note 3.

6 As to contingent removal see PARA 308.

7 As to suspension see PARA 309.

8 As to such orders see PARA 312. As to the Family Health Services Appeal Authority see PARA 443.

9 Ie under the National Health Service Act 1977 s 49J; see PARA 310.

10 National Health Service Act 1977 s 49L(1) (ss 49L, 49O, 49Q added by the Health and Social Care Act 2001 s 25; National Health Service Act 1977 s 49L(1), (2), (3) amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 23; National Health Service (Consequential Provisions) Act 2006 Sch 4). Any such decision by a primary care trust must be reached in accordance with regulations made by the Secretary of State: see the National Health Service Act 1977 s 49Q (as so added; and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 28, National Health Service (Consequential Provisions) Act 2006 Sch 4). As to the Secretary of State see PARA 6 note 8. As to the procedure to be followed by a primary care trust or local health board before reaching such a decision see

the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9G (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181). As to local health boards see PARA 75. Where a decision is changed on review the primary care trust or local health board must notify the prescribed persons of that decision: see the National Health Service Act 1977 s 49O (as so added); National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9D (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181, SI 2006/635).

- 11 As to the meaning of 'month' see PARA 28 note 16.
- 12 National Health Service Act 1977 s 49L(2)(a) (as added and amended: see note 10).
- 13 National Health Service Act 1977 s 49L(2)(b) (as added: see note 10).
- 14 National Health Service Act 1977 s 49L(3) (as added and amended: see note 10).
- 15 National Health Service Act 1977 s 49L(3)(a) (as added: see note 10).
- 16 National Health Service Act 1977 s 49L(3)(b) (as added: see note 10).
- 17 National Health Service Act 1977 s 49L(3)(c) (as added: see note 10).

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.



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### **312. Appeals.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

A practitioner<sup>2</sup> may appeal to the Family Health Services Appeal Authority<sup>3</sup> against the following decisions of a primary care trust<sup>4</sup> by giving notice in writing<sup>5</sup> to the Family Health Services Appeal Authority within the period of 28 days beginning with the date on which the primary care trust gave him notice of the decision<sup>6</sup>. The primary care trust decisions in question are<sup>7</sup>: (1) to remove<sup>8</sup> the practitioner from a list<sup>9</sup>; (2) to remove him contingently<sup>10</sup>; (3) to impose any particular condition<sup>11</sup>, or to vary any condition or to impose any different condition<sup>12</sup>; (4) to vary<sup>13</sup> his terms of service<sup>14</sup>; (5) any decision<sup>15</sup> on a review of a contingent removal<sup>16</sup>.

The appeal is by way of redetermination of the primary care trust's decision<sup>17</sup>. On an appeal, the Family Health Services Appeal Authority may make any decision which the primary care trust could have made<sup>18</sup>. If the Family Health Services Appeal Authority decides to remove the practitioner contingently: (a) the primary care trust and the practitioner may each apply to the Family Health Services Appeal Authority for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked<sup>19</sup>; and (b) the primary care trust may remove him from the list if it determines that he has failed to comply with a condition<sup>20</sup>.

The primary care trust must not remove a person from a list, or impose a contingent removal until the expiry of the period of 28 days allowed<sup>21</sup> for bringing an appeal<sup>22</sup>, or if the practitioner appeals within that period, until the Family Health Services Appeal Authority has disposed of the appeal<sup>23</sup>.

Regulations may provide for payments by primary care trusts to practitioners who are removed from lists pursuant to decisions of the Family Health Services Appeal Authority under these provisions, but whose appeals against those decisions are successful<sup>24</sup>.

1 The National Health Service Act 1977 ss 49M, 49O are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see note 18) will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'practitioner' see PARA 306 note 3.

3 As to the Family Health Services Appeal Authority see PARA 443.

4 As to primary care trusts see PARA 111.

5 As to the meaning of 'writing' see PARA 7 note 2.

6 National Health Service Act 1977 s 49M(1) (ss 49M, 49O added by the Health and Social Care Act 2001 s 25; National Health Service Act 1977 s 49M(1), (3), (4)-(6) amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 24; National Health Service (Consequential Provisions) Act 2006 Sch 4).

- 7 National Health Service Act 1977 s 49M(2) (as added and amended: see note 6).
- 8 Ie under the National Health Service Act 1977 s 49F (see PARA 306) or s 49G(3) (see PARA 308) or s 49M(5) (b) (see the text to note 20).
- 9 National Health Service Act 1977 s 49M(2)(a) (as added: see note 6). As to ophthalmic lists see PARA 299.
- 10 National Health Service Act 1977 s 49M(2)(b) (as added: see note 6). As to contingent removal see PARA 308.
- 11 Ie under the National Health Service Act 1977 s 49G: see PARA 308.
- 12 National Health Service Act 1977 s 49M(2)(c) (as added: see note 6).
- 13 Ie under the National Health Service Act 1977 s 49G(4): see PARA 308.
- 14 National Health Service Act 1977 s 49M(2)(d) (as added: see note 6).
- 15 Ie under the National Health Service Act 1977 s 49L: see PARA 311.
- 16 National Health Service Act 1977 s 49M(2)(e) (as added: see note 6).
- 17 National Health Service Act 1977 s 49M(3) (as added and amended: see note 6).
- 18 National Health Service Act 1977 s 49M(4) (as added and amended: see note 6). Where a decision is changed on appeal the primary care trust must notify any person or body that was notified of the original decision of the later decision: see s 49O (as so added); National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9D (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883; and amended by SI 2002/601, SI 2002/2469, SI 2005/480, SI 2006/181, SI 2006/635). As to the meaning of 'person' see PARA 17 note 2.
- 19 National Health Service Act 1977 s 49M(5)(a) (as added and amended: see note 6).
- 20 National Health Service Act 1977 s 49M(5)(b) (as added and amended: see note 6).
- 21 Ie in the National Health Service Act 1977 s 49M(1): see the text to note 6.
- 22 National Health Service Act 1977 s 49M(6)(a) (as added and amended: see note 6).
- 23 National Health Service Act 1977 s 49M(6)(b) (as added and amended: see note 6).
- 24 National Health Service Act 1977 s 49M(7) (as added: see note 6). At the date at which this volume states the law no such regulations had been made.

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

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### **313. National disqualification.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

If the Family Health Services Appeal Authority<sup>2</sup> removes the practitioner<sup>3</sup> from an ophthalmic list<sup>4</sup>, it may also decide to disqualify him from inclusion in all such lists prepared by all primary care trusts<sup>5</sup> and all supplementary lists prepared by all primary care trusts<sup>6</sup>, or only from inclusion in one or more descriptions of such lists prepared by all primary care trusts, the description being specified by the Family Health Services Appeal Authority in its decision<sup>7</sup>. Such a decision by the Family Health Services Appeal Authority is known as the imposition of a 'national disqualification'<sup>8</sup>.

The primary care trust may apply to the Family Health Services Appeal Authority for a national disqualification to be imposed on a person<sup>9</sup> after it has removed him from a list of any of the kinds referred to above, or refused to include him in such a list<sup>10</sup>. If the Family Health Services Appeal Authority imposes a national disqualification on a person no primary care trust may include him in a list of any of the kinds from which he has been disqualified from inclusion prepared by it; and if he is included in such a list, each primary care trust in whose list he is included must remove him from it<sup>11</sup>.

The Family Health Services Appeal Authority may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it<sup>12</sup>.

1 The National Health Service Act 1977 s 49N is repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continues to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338. Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see note 13) will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the Family Health Services Appeal Authority see PARA 443. As to appeals to the Family Health Services Appeal Authority see PARA 312.

3 As to the meaning of 'practitioner' see PARA 306 note 3.

4 As to ophthalmic lists see PARA 299.

5 As to primary care trusts see PARA 111.

6 As to supplementary lists see PARA 299.

7 See the National Health Service Act 1977 s 49N(1) (s 49N added by the Health and Social Care Act 2001 s 25; National Health Service Act 1977 s 49N(1) amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 25; the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 7, 24; the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4), Sch 4).

8 National Health Service Act 1977 s 49N(2) (as added: see note 7). The Family Health Services Appeal Authority may also impose a national disqualification on a practitioner if it dismisses an appeal by him against

the refusal by a primary care trust to include him in such a list: s 49N(3) (as so added; and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 25; National Health Service (Consequential Provisions) Act 2006 Sch 4).

9 As to the meaning of 'person' see PARA 17 note 2.

10 See the National Health Service Act 1977 s 49N(4) (as added (see note 7); and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 25; National Health Service (Consequential Provisions) Act 2006 Sch 4). Any such application must be made before the end of the period of three months beginning with the date of the removal or of its refusal: National Health Service Act 1977 s 49N(5) (as so added). As to the meaning of 'month' see PARA 28 note 16.

11 See the National Health Service Act 1977 s 49N(6) (as added (see note 7); and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 25; National Health Service (Consequential Provisions) Act 2006 Sch 4).

12 See the National Health Service Act 1977 s 49N(7) (as added: see note 7). Subject to s 49N(9), the person may not request such a review before the end of the period of two years beginning with the date on which the national disqualification was imposed, or one year beginning with the date of the Family Health Services Appeal Authority's decision on the last such review: s 49N(8) (as so added). The Secretary of State may provide in regulations for s 49N(8) to have effect in prescribed circumstances as if the reference there to 'two years' or 'one year' were a reference to a different period specified in the regulations: s 49N(9) (as so added). As to the provision made see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9H (added in relation to England by SI 2001/3739, and in relation to Wales by SI 2002/1883). As to the Secretary of State see PARA 6 note 8. In relation to Wales the powers of the Secretary of State under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, are exercisable by the Welsh Ministers: see the National Health Service (Wales) Act 2006 ss 71-79, 206(1); and PARA 338. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

## **UPDATE**

### **295-313 Arrangements for general ophthalmic services ... National disqualification**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

### **313 National disqualification**

NOTE 10--National Health Service Act 1977 s 49N(4) further amended: Health Act 2006 Sch 8 para 20, Sch 9.

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### **314. Use of accommodation.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

If the Secretary of State<sup>2</sup> considers that any accommodation provided by him is suitable for use in connection with the provision of general ophthalmic services<sup>3</sup> he may make the accommodation available on such terms as he thinks fit to persons<sup>4</sup> providing any of those services<sup>5</sup>.

A primary care trust<sup>6</sup> may provide premises for the use of persons providing general ophthalmic services on any terms it thinks fit<sup>7</sup>.

1 The National Health Service Act 1977 ss 18A, 52 are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338.

2 As to the Secretary of State see PARA 6 note 8.

3 As to the meaning of 'general ophthalmic services' see PARA 295.

4 As to the meaning of 'person' see PARA 17 note 2.

5 National Health Service Act 1977 s 52 (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 14 Pt 4; National Health Service (Consequential Provisions) Act 2006 Sch 4).

6 As to primary care trusts see PARA 111.

7 See the National Health Service Act 1977 s 18A(3) (s 18A added by the Health Act 1999 s 5; National Health Service Act 1977 s 18A(3) amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 7, 12, Sch 14 Pt 4, the National Health Service (Consequential Provisions) Act 2006 Sch 4).

### **UPDATE**

### **314 Use of accommodation**

NOTE 7--National Health Service Act 1977 s 18A(3) further amended: Health Act 2006 Sch 8 para 9, Sch 9.

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### **315. Inadequate services.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

If the Secretary of State<sup>2</sup> is satisfied, after such inquiry as he may think fit, as respects the area, or part of the area, of a primary care trust<sup>3</sup> that the persons<sup>4</sup> whose names are included in any list of persons undertaking to provide general ophthalmic services<sup>5</sup> are not such as to secure the adequate provision of the services in that area or part, or that for any other reason any considerable number of persons in any such area or part are not receiving satisfactory services under the arrangements in force for the provision of such services, then: (1) he may authorise the primary care trust to make such other arrangements as he may approve, or may himself make such other arrangements; and (2) he may dispense with any of the statutory requirements<sup>6</sup> so far as appears to him necessary to meet exceptional circumstances and enable such arrangements to be made<sup>7</sup>.

1 The National Health Service Act 1977 s 56 is repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continues to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338.

2 As to the Secretary of State see PARA 6 note 8.

3 As to primary care trusts see PARA 111.

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the meaning of 'general ophthalmic services' see PARA 295. As to ophthalmic lists see PARA 299.

6 As to the requirements of regulations made under the National Health Service Act 1977 Pt II (ss 29-56).

7 See the National Health Service Act 1977 s 56 (amended by the Health and Social Security Act 1984 Sch 3 para 8; the Health Authorities Act 1995 Sch 1 Pt I paras 1, 37; the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 1 paras 1, 30; the Health and Social Care (Community Health and Standards) Act 2003 Sch 14 Pt 4; the National Health Service (Consequential Provisions) Act 2006 Sch 4).

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### **316. Permission for use of facilities in private practice.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

A medical practitioner<sup>2</sup>, an ophthalmic optician<sup>3</sup>, and any other person<sup>4</sup> who provides ophthalmic services<sup>5</sup>, who wishes to use any relevant health service accommodation or facilities<sup>6</sup> for the purpose of providing ophthalmic services to non-resident private patients may apply in writing<sup>7</sup> to the Secretary of State for permission<sup>8</sup>. On receiving an application the Secretary of State must consider whether anything for which permission is sought would interfere with the giving of full and proper attention to persons seeking or afforded access otherwise than as private patients to any ophthalmic services, and must grant the permission applied for unless in his opinion anything for which permission is sought would so interfere<sup>9</sup>. Any grant of permission must be on such terms (including terms as to the payment of charges for the use of the relevant health service accommodation or facilities pursuant to the permission) as the Secretary of State may from time to time determine<sup>10</sup>.

1 The National Health Service Act 1977 s 72 is repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continues to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338.

2 As to the meaning of 'medical practitioner' see PARA 295 note 4.

3 As to the meaning of 'ophthalmic optician' see PARA 295 note 7.

4 As to the meaning of 'person' see PARA 17 note 2.

5 Ie under the National Health Service Act 1977 Pt II (ss 28-56).

6 'Relevant health service accommodation or facilities', in relation to a person wishing to use them, means any accommodation or facilities available at premises provided by the Secretary of State by virtue of the National Health Service Act 1977, being accommodation or facilities which that person is for the time being authorised to use for purposes of the Act: s 72(6) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 7, 27(1), (3)). As to the Secretary of State see PARA 6 note 8.

7 As to the meaning of 'writing' see PARA 7 note 2.

8 See the National Health Service Act 1977 s 72(1), (5) (amended by the Health and Social Security Act 1984 Sch 8 Pt I; the Health and Social Care (Community Health and Standards) Act 2003 Sch 14 Pt 4; the National Health Service (Consequential Provisions) Act 2006 Sch 4). Any application for permission must specify which of the relevant health service accommodation or facilities the applicant wishes to use for the purpose of providing services to such patients, and which services he wishes the permission to cover: see the National Health Service Act 1977 s 72(2).

9 See the National Health Service Act 1977 s 72(3).

10 National Health Service Act 1977 s 72(4).

### **UPDATE**

**316 Permission for use of facilities in private practice**

NOTE 8--National Health Service Act 1977 s 72(5) further amended: Health Act 2006 Sch 8 para 21.



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### **317. Supply of goods and services by the Secretary of State.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> may supply or make available to persons<sup>3</sup> providing general ophthalmic services<sup>4</sup> such goods, materials or other facilities as may be prescribed<sup>5</sup>. The Secretary of State may arrange to make available to local authorities<sup>6</sup> the services of persons providing general ophthalmic services so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health<sup>7</sup>.

1 The National Health Service Act 1977 s 26 is repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continues to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338.

2 As to the Secretary of State see PARA 6 note 8.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'general ophthalmic services' see PARA 295.

5 See the National Health Service Act 1977 s 26(2) (substituted by the National Health Service (Primary Care) Act 1997 Sch 2 para 5(2); and amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 7, 13(1), (2)(a), Sch 14 Pt 4; National Health Service (Consequential Provisions) Act 2006 Sch 4). 'Prescribed' means prescribed by regulations: National Health Service Act 1977 s 128(1). At the date at which this volume states the law no such regulations had been made.

6 'Local authority' means a county council, a district council, a London borough council, and the Common Council of the City of London: see the National Health Service Act 1977 s 128(1) (definition amended by the Local Government Act 1985 Sch 17; the Health Authorities Act 1995 Sch 3; the National Health Service (Consequential Provisions) Act 2006 Sch 4). As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.

7 See the National Health Service Act 1977 s 26(4) (added by the Health Services Act 1980 s 3(1); and amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 7, 13(1), (3)(a), Sch 14 Pt 4, National Health Service (Consequential Provisions) Act 2006 Sch 4).

## **UPDATE**

### **317 Supply of goods and services by the Secretary of State**

NOTES 5, 7--National Health Service Act 1977 s 26(2), (4) further amended: Health Act 2006 Sch 8 para 11.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(iii) Ophthalmic Services/A. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 1977/(A) General Arrangements for General Ophthalmic Services/318. Maximum price of supplies.

### **318. Maximum price of supplies.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> may by order provide for controlling maximum prices to be charged for any medical supplies<sup>3</sup> required for the purposes of the National Health Service Act 1977<sup>4</sup>. The Secretary of State may by direction<sup>5</sup> given with respect to any undertaking<sup>6</sup>, or by order made with respect to any class or description of undertakings, being an undertaking or class or description of undertakings concerned with medical supplies required for the purposes of the Act, require persons carrying on the undertaking or undertakings of that class or description: (1) to keep such books, accounts and records relating to the undertaking as may be prescribed by the direction or, as the case may be, by the order or a notice served under the order<sup>7</sup>; (2) to furnish at such times, in such manner and in such form as may be so prescribed such estimates, returns or information relating to the undertaking as may be so prescribed<sup>8</sup>.

1 The National Health Service Act 1977 ss 57, 126 are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338.

2 As to the Secretary of State see PARA 6 note 8.

3 'Medical supplies' includes surgical, and optical materials and equipment: see the National Health Service Act 1977 s 57(3).

4 See the National Health Service Act 1977 s 57(1), Sch 11. At the date at which this volume states the law no order had been made under s 57.

5 Such directions must be given by an instrument in writing: see the National Health Service Act 1977 s 126(3A) (added by the Health Authorities Act 1995 Sch 1 Pt I paras 1, 57). Any person given such a direction must comply with it: see the National Health Service Act 1977 s 126(3C) (added by the Health Act 1999 Sch 4 paras 3, 37). As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'person' see PARA 17 note 2.

6 'Undertaking' means any public utility undertaking or any undertaking by way of trade or business: National Health Service Act 1977 s 57(3).

7 National Health Service Act 1977 s 57(2)(a).

8 National Health Service Act 1977 s 57(2)(b).

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### **319. Charges for optical appliances.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

Regulations made by the Secretary of State<sup>2</sup> may provide for the making and recovery in such manner as may be prescribed of charges of such sum as may be determined by or in accordance with directions<sup>3</sup> given by the Secretary of State, in respect of the supply under the National Health Service Act 1977 of glasses and contact lenses<sup>4</sup>.

1 The National Health Service Act 1977 ss 78, 126, Sch 12 are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338.

2 As to the Secretary of State see PARA 6 note 8.

3 Such directions must be given by an instrument in writing: see the National Health Service Act 1977 s 126(3A) (added by the Health Authorities Act 1995 Sch 1 Pt I paras 1, 57). Any person given such a direction must comply with it: see the National Health Service Act 1977 s 126(3C) (added by the Health Act 1999 Sch 4 paras 3, 37). As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'person' see PARA 17 note 2.

4 See the National Health Service Act 1977 s 78(1), Sch 12 para 2(1) (s 78(1) amended by the Health and Medicines Act 1988 Sch 3; National Health Service Act 1977 Sch 12 para 2(1) substituted by the Health and Medicines Act 1988 Sch 2 paras 1, 8). As to the regulations made see the National Health Service (Optical Charges and Payments) Regulations 1997, SI 1997/818; and PARAS 473, 474.

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### **320. Publication of particulars.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

The local health board<sup>2</sup> or primary care trust<sup>3</sup> must make available for inspection at its offices and at such other places in its locality as appear to the local health board or primary care trust to be convenient for informing any person<sup>4</sup> interested, copies of the National Health Service (General Ophthalmic Services) Regulations 1986<sup>5</sup>, the terms of service<sup>6</sup>, the ophthalmic list<sup>7</sup> and the statement of remuneration<sup>8</sup>, but the local health board or primary care trust need not make available copies of all those documents at every place at which it makes available copies of any of them<sup>9</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to local health boards see PARA 75.

3 As to primary care trusts see PARA 111.

4 As to the meaning of 'person' see PARA 17 note 2.

5 I.e. the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975.

6 As to the terms of service see PARA 323.

7 As to the ophthalmic list see PARA 299.

8 As to the statement of remuneration see PARA 322.

9 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 15 (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 15 amended by SI 2001/3739, SI 2002/1883, SI 2002/2469).

### **UPDATE**

#### **320-326 Publication of particulars ... Sight tests treated as a test under general ophthalmic services**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(iii) Ophthalmic Services/A. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 1977/(A) General Arrangements for General Ophthalmic Services/321. Service of documents on contractors.

### **321. Service of documents on contractors.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

Subject to specific provision relating to removal of a contractor<sup>2</sup> from an ophthalmic list<sup>3</sup>, any document which is required or authorised<sup>4</sup> to be given to a contractor may be given by delivering it to him or by sending it addressed to him at any address notified by him to the local health board<sup>5</sup> or primary care trust<sup>6</sup> for inclusion in the ophthalmic list as a place at which he has undertaken to provide general ophthalmic services<sup>7</sup> or, in the case of a mobile practice<sup>8</sup>, the address notified to the local health board or primary care trust as the address to which correspondence may be sent<sup>9</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'contractor' see PARA 295 note 13.

3 In subject to the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 9(6): see PARA 307. As to ophthalmic lists see PARA 299.

4 In under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, including the terms of service. As to the terms of service see PARA 323.

5 As to local health boards see PARA 75.

6 As to primary care trusts see PARA 111.

7 As to the meaning of 'general ophthalmic services' see PARA 295.

8 'Mobile practice' means a contractor who has made arrangements with the local health board or primary care trust to provide mobile services, and does not have practice premises in the locality: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 2(1) (definition added in relation to England by SI 2001/414, and in relation to Wales by SI 2001/1423; and substituted by SI 2005/480, SI 2006/181). 'Mobile services' means general ophthalmic services provided at a day centre, residential centre, or the patient's home where the patient is unable to leave it unaccompanied because of physical or mental illness or disability, which a contractor has made arrangements with a local health board or primary care trust to provide in its locality: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 2(1) (definition added in relation to England by SI 2005/480, and in relation to Wales by SI 2006/181).

9 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 16 (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 16 amended by SI 2001/414, SI 2001/1423, SI 2001/3739, SI 2002/1883, SI 2002/2469).

## **UPDATE**

### **320-326 Publication of particulars ... Sight tests treated as a test under general ophthalmic services**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(iii) Ophthalmic Services/A. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 1977/ (B) Remuneration and Terms of Service/322. The statement of remuneration.

## (B) REMUNERATION AND TERMS OF SERVICE

### 322. The statement of remuneration.

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> must, after consultation with such organisations as appear to him to be representative of contractors<sup>3</sup> providing general ophthalmic services<sup>4</sup>, make provision in a determination as to the fees to be paid by a local health board<sup>5</sup> or a primary care trust<sup>6</sup> for the testing of sight by ophthalmic medical practitioners<sup>7</sup> and opticians<sup>8</sup>, and the allowances to be paid in respect of continuing education and training by ophthalmic medical practitioners and opticians other than corporate opticians<sup>9</sup>. Any such determination must be published<sup>10</sup>, and may be amended, in whole or in part, after consultation with organisations as appear to the Secretary of State to be representative of contractors providing general ophthalmic services<sup>11</sup>.

A local health board or primary care trust must make payments to contractors in accordance with the determination<sup>12</sup>, and must make copies of the determination available for inspection<sup>13</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the Secretary of State see PARA 6 note 8. In relation to Wales the powers of the Secretary of State under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, are exercisable by the Welsh Ministers: see the National Health Service (Wales) Act 2006 ss 71-79, 206(1); and PARA 338. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

3 As to the meaning of 'contractor' see PARA 295 note 13.

4 As to the meaning of 'general ophthalmic services' see PARA 295 note 13.

5 As to local health boards see PARA 75.

6 As to primary care trusts see para 111.

7 As to the meaning of 'ophthalmic medical practitioner' see para 297 note 3.

8 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 10(1)(a) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 10(1)(a) numbered as such in relation to England by SI 2005/1481, and in relation to Wales by SI 2007/122; and amended by SI 2001/3739, SI 2002/1883, SI 2002/2469). As to the meaning of 'optician' see para 299 note 9.

9 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 10(1)(b) (added in relation to England by SI 2005/1481, and in relation to Wales by SI 2007/122). As to the meaning of 'corporate optician' see para 299 note 9. In relation to Wales, a determination may provide that allowances to be paid in respect of continuing education and training by ophthalmic medical practitioners and opticians other than corporate opticians may be paid in respect of a period beginning on a date earlier than the date of the determination if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 10(1) (added by SI 2007/122).

10 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 10(2)(a).

11 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 10(2)(b).

12 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A) (as added: see note 8), 12 (amended by SI 1989/395; SI 1996/705; SI 2001/3739; SI 2002/1883; SI 2002/2469).

13 See para 320.

## **UPDATE**

### **320-326 Publication of particulars ... Sight tests treated as a test under general ophthalmic services**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(iii) Ophthalmic Services/A. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 1977/ (B) Remuneration and Terms of Service/323. Terms of service.

### **323. Terms of service.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

The arrangements for the provision of general ophthalmic services<sup>2</sup> which it is the duty of the local health board<sup>3</sup> or primary care trust<sup>4</sup> to make and administer<sup>5</sup> must incorporate the statutory terms of service<sup>6</sup> and the statement as to remuneration<sup>7</sup>. The local health board or primary care trust must make copies of the terms of service available for inspection<sup>8</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'general ophthalmic services' see PARA 295.

3 As to local health boards see PARA 75.

4 As to primary care trusts see para 111.

5 Ie under the National Health Service Act 1977 ss 15, 38: see para 295.

6 As to the statutory terms of service see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 (amended by SI 1988/486; SI 1989/1175; SI 1990/1051; SI 1996/705; SI 2001/414; SI 2001/1423; SI 2001/3739; SI 2002/601; SI 2002/1883; SI 2002/2469; SI 2003/837; SI 2003/2863; SI 2004/865; SI 2004/1016; SI 2005/480; SI 2006/181; SI 2006/635; SI 2006/1550).

7 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 11 (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 11 amended by SI 2001/3739; SI 2002/1883; SI 2002/2469). As to the statement as to remuneration see para 322.

8 See para 320.

### **UPDATE**

#### **320-326 Publication of particulars ... Sight tests treated as a test under general ophthalmic services**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

### **323 Terms of service**

NOTE 6--SI 1986/975 Sch 1 further amended: SI 2008/1514.

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## (C) SIGHT TESTS

### 324. Eligibility for sight tests.

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

A person may have his sight tested under general ophthalmic services<sup>2</sup> if, at the time of the testing of sight, he is any of the following: (1) a person who is under the age of 16 years<sup>3</sup>; (2) a person who is under the age of 19 years and receiving qualifying full-time education<sup>4</sup>; (3) a person who is aged 60 years or more<sup>5</sup>; (4) a person whose resources are treated as being less than, or equal to, his requirements<sup>6</sup>; (5) a person who requires to wear a complex appliance<sup>7</sup>; (6) a person who is registered<sup>8</sup> blind or partially sighted<sup>9</sup>; (7) a person who has been diagnosed as suffering from diabetes or glaucoma, or has been advised by an ophthalmologist<sup>10</sup> that he is predisposed to the development of glaucoma<sup>11</sup>; (8) a person who is aged 40 or over and is the parent, brother, sister or child of a person who has been diagnosed as suffering from glaucoma<sup>12</sup>; (9) a relevant child<sup>13</sup> whom a responsible local authority is<sup>14</sup> supporting<sup>15</sup>; (10) a prisoner<sup>16</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'general ophthalmic services' see PARA 295 note 13.

3 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(a) (reg 13 substituted by SI 1989/395). As to the time at which a person attains a particular age see PARA 36 note 7.

4 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(b) (as substituted: see note 3). As to the meaning of 'qualifying full time education' see PARA 295 note 8.

5 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(bb) (reg 13 as substituted (see note 3); reg 13(1)(bb) added by SI 1999/693).

6 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(c) (as substituted: see note 3). As to the circumstances in which a person's resources must be treated as being less than or equal to his requirements see reg 13(2) (as so substituted; and amended by SI 1995/558, SI 1996/2320, SI 2001/3323, SI 2003/657, SI 2003/955, SI 2003/2381, SI 2004/936, SI 2004/1014, SI 2004/1042, SI 2005/483, SI 2005/1630).

7 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(d) (as substituted: see note 3). 'Complex appliance' means an optical appliance at least one lens of which has a power in any one meridian of plus or minus 10 or more dioptries, or is a prism-controlled bifocal lens: reg 2(1) (definition added by SI 1989/395; and amended by SI 1991/583, SI 1992/404).

8 Ie under the National Assistance Act 1948 s 29: see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1020.

9 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(e) (as substituted: see note 3).

10 'Ophthalmologist' means a doctor whose name is included in the register of specialists kept by the General Medical Council under the General and Specialist Medical Practice (Education, Training and

Qualifications) Order 2003, SI 2003/1250, art 13(1) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 45) and in respect of whom that register indicates his speciality to be ophthalmology: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(2A) (reg 13 (as substituted: see note 3); reg 13(2A) added by SI 1999/693, and amended by SI 2006/1550).

11 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(f) (as substituted (see note 3); and amended by SI 1999/693).

12 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(g) (as substituted: see note 3).

13 le within the meaning of the Children Act 1989 s 23A: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 928.

14 le under the Children Act 1989 s 23B(8): see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 929.

15 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(h) (reg 13 (as substituted: see note 3); reg 13(1)(h) added, in relation to England, by SI 2001/3066).

16 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13(1)(i) (reg 13 (as substituted: see note 3); reg 13(1)(i) added, in relation to England, by SI 2004/642). 'Prisoner' means a person who is detained in a prison in which ophthalmic services are provided under the National Health Service Act 1977 by or under arrangements made by a primary care trust otherwise than by virtue of s 18A(5) (repealed): National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 2(1) (definition added by SI 2004/642). 'Prison' includes a young offender institution but not a secure training centre or a naval, military or air force prison; and for the purposes of this definition 'secure training centre' means a place in which offenders subject to detention and training orders under the Powers of Criminal Courts (Sentencing) Act 2000 s 100 (offenders under 18 (detention and training orders): see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1398) may be detained and given training and education and prepared for their release; and 'young offender institution' means a place for the detention of offenders sentenced to detention in a young offender institution or to custody for life: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 2(1) (definition added by SI 2004/642).

## UPDATE

### 320-326 Publication of particulars ... Sight tests treated as a test under general ophthalmic services

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

### 324 Eligibility for sight tests

TEXT AND NOTES--Replaced in relation to England: for provision as to eligibility for sight tests see now the Primary Ophthalmic Services Regulations 2008, SI 2008/1186, reg 3 (amended by SI 2008/2449, SI 2009/409).

NOTE 6--SI 1986/975 reg 13(2) further amended: SI 2008/2552 (Wales).

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### **325. Applications for sight tests.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

An eligible person<sup>2</sup> who wishes to have his sight tested under general ophthalmic services may make an application to any contractor<sup>3</sup> for his sight to be tested<sup>4</sup>. The application must be made on a form provided for that purpose to contractors by the local health board<sup>5</sup> or primary care trust<sup>6</sup> and must contain a written<sup>7</sup> declaration signed by the applicant to the effect that he is an eligible person<sup>8</sup>.

The contractor must satisfy himself<sup>9</sup> that the person is an eligible person by asking for satisfactory evidence of entitlement unless the contractor already has satisfactory evidence<sup>10</sup> of it available to him<sup>11</sup>, and where the patient has been asked for but not produced satisfactory evidence that he is an eligible person, then the contractor must record the fact on the patient's sight test form<sup>12</sup>. The contractor must also ensure that particulars of the patient and the approximate date of the last testing, if any, of his sight are inserted in a sight test form by the patient or on his behalf<sup>13</sup>, and satisfy himself that the testing of sight is necessary<sup>14</sup>. Where the contractor has provided the sight test at the place where the patient normally resides, he must record on the sight test form the reason given by the patient, or on his behalf, for not being able to leave home unaccompanied<sup>15</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 'Eligible person' means a person who, in accordance with the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13 (see PARA 324), may have his sight tested under general ophthalmic services: reg 2(1) (definition added by SI 1989/395). As to the meaning of 'general ophthalmic services' see PARA 295 note 13.

3 As to the meaning of 'contractor' see PARA 295 note 13.

4 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(1) (reg 13A added by SI 1989/395). As to charges for optical appliances see PARA 319. A primary care trust was entitled to refuse to include an applicant on its ophthalmic list where that applicant was one which provided services only to its members, with those members having to meet certain criteria and pay a subscription before being able to receive those services. The pre-condition to the grant of services presented by the requirement for membership and the payment of a membership subscription constituted an infringement of the requirement that any eligible person be able to have his sight tested by any contractor on the list: *Costco Wholesale UK Ltd v Milton Keynes Primary Care Trust* [2008] EWHC 216 (Admin), [2008] All ER (D) 265 (Feb).

5 As to local health boards see PARA 75.

6 As to primary care trusts see PARA 111.

7 As to the meaning of 'written' see PARA 7 note 2.

8 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 13A(2) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(2), (3) as added (see note 4), and amended by SI 2001/3739, SI 2002/1883, SI 2002/2469). Certain eligible persons must provide additional evidence as to their eligibility: see the National Health Service

(General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(3) (as so added and amended). An application for general ophthalmic services may be made and a signature may be given: (1) on behalf of any person under 16 years of age by either parent or, in the absence of both parents, the guardian or other adult person who has the care of the child (reg 14(1)(a)); (2) on behalf of any other person who is incapable of making the application or, giving the signature, by a relative or any other adult who has the care of that person (reg 14(1)(b)); (3) on behalf of any person under 18 years of age in the care of an authority to whose care he has been committed under the provisions of the Children and Young Persons Act 1969 or which has received him into care under the Child Care Act 1980 by a person duly authorised by that authority (National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 14(1)(c)(i)); or (4) on behalf of any person under 18 years of age in the care of a voluntary organisation, by that organisation or a person duly authorised by them (reg 14(1)(c)(ii)). However, a signature on an application may not be given by the contractor to whom the application is made: reg 14(2). As to the time at which a person attains a particular age see PARA 36 note 7.

9 The contractor may appoint a member of his staff to carry out the requirements placed on him by the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(4)(a)(i), (ii) on his behalf, provided that he ensures that person is given instruction by him to enable him to fulfil the requirements on his behalf: reg 13A(7) (reg 13A as added (see note 4); reg 13A(7) added in relation to England by SI 2001/414, and in relation to Wales by SI 2001/1423).

10 This exception does not apply in the case of a person whose resources are treated as being less than, or equal to, his requirements: see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(4)(a)(i) (reg 13A as added (see note 4); reg 13A(4)(a) substituted by SI 2001/414, SI 2001/1423).

11 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(4)(a)(i) (as added and substituted: see note 10). Where an eligible person is one who requires to wear a complex appliance and is unable to produce the required evidence in respect thereof, the contractor may, instead of satisfying himself that those requirements are met, satisfy himself that the person is an eligible person by referring to his own records or by measuring the power of the lenses of the person's existing optical appliance by means of a focimeter or other suitable means: see reg 13A(5) (as added: see note 4). As to the meaning of 'complex appliance' see PARA 324 note 7.

12 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(4)(a)(ii) (as added and substituted: see note 10).

13 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(4)(b) (as added: see note 4).

14 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(4)(c) (as added: see note 4).

15 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13A(6) (reg 13A as added (see note 4); reg 13A(6) added in relation to England by SI 2001/414, and in relation to Wales by SI 2001/1423).

## **UPDATE**

### **320-326 Publication of particulars ... Sight tests treated as a test under general ophthalmic services**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

### **325 Applications for sight tests**

TEXT AND NOTES--Replaced in relation to England: for provision as to applications for sight tests see the Primary Ophthalmic Services Regulations 2008, SI 2008/1186, reg 4 (amended by SI 2010/634).

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### **326. Sight tests treated as a test under general ophthalmic services.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

A person whose sight is tested by a contractor<sup>2</sup> but who was not an eligible person<sup>3</sup> immediately before the testing and who is shown during the testing to require to wear a complex appliance<sup>4</sup>, or who is shown<sup>5</sup> within three months<sup>6</sup> after the testing to fall within certain specified descriptions of qualification as to a person whose resources are treated as being less than, or equal to, his requirements<sup>7</sup>, must be taken for the purposes of the testing to have so fallen immediately before his sight was tested<sup>8</sup>.

1 Upon the law relating to primary ophthalmic services coming into force the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, will lapse in relation to England but will continue to apply in relation to Wales: see PARA 338. As to regulations making transitional provision in relation to England see PARA 329. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the meaning of 'contractor' see PARA 295 note 13.

3 As to the meaning of 'eligible person' see PARA 325 note 2.

4 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13B(1) (a) (reg 13B added by SI 1989/395). As to the meaning of 'complex appliance' see PARA 324 note 7.

5 A person is shown to fall within a specified description of qualification if he presents to the local health board or primary care trust a notice of entitlement which is effective for a period which includes the date of the testing of sight or for a period beginning no later than 14 days after the date of the testing of sight: see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, regs 2(1A), 13B(3) (reg 2(1A) added by SI 2004/1014; National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13B(3) as added (see note 4), and amended by SI 2001/3323, SI 2001/3739, SI 2002/1883, SI 2002/2469). As to local health boards see PARA 75. As to primary care trusts see PARA 111.

6 As to the meaning of 'month' see PARA 28 note 16.

7 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13B(1) (b) (as added (see note 4); and amended by SI 2001/3323). Where a testing of a person's sight is so treated as a testing of sight under the National Health Service Act 1977 the local health board or primary care trust must, on being presented with a receipt for, or other evidence of, any fee paid for the testing, and on being satisfied as to its amount, pay to that person an amount equal to that fee: National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13B(4) (as so added; and amended by SI 2001/3323, SI 2001/3739, SI 2002/1883, SI 2002/2469).

8 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13B(1) (as added: see note 4). Where this provision applies the testing must be treated as a testing of sight under the National Health Service Act 1977 for the purposes of the National Health Service (Optical Charges and Payments) Regulations 1997, SI 1997/818 (see PARA 319) as well as for the purposes specified in the National Health Service Act 1977 s 38(6)(i), (ii) (see PARA 295): National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 13B(2) (as so added).

## **UPDATE**

### **320-326 Publication of particulars ... Sight tests treated as a test under general ophthalmic services**

SI 1986/975 (as amended) revoked in relation to England: SI 2008/1700.

**326 Sight tests treated as a test under general ophthalmic services**

TEXT AND NOTES--Replaced in relation to England: for provision as to sight tests treated as a test under general ophthalmic services see the Primary Ophthalmic Services Regulations 2008, SI 2008/1186, reg 5.

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## (D) LOCAL COMMITTEES

### **327. Local medical and optical committees.**

Until the coming into force of the law relating to primary ophthalmic services, the following provisions continue to have effect<sup>1</sup>.

Where a primary care trust<sup>2</sup> is satisfied that a committee formed for its area, or for its area together with the area of one or more other primary care trusts, is representative of the ophthalmic opticians<sup>3</sup> providing general ophthalmic services<sup>4</sup> in the primary care trust's area, the primary care trust may recognise that committee<sup>5</sup>. Any committee so recognised is called the 'local optical committee' for the area of the primary care trust<sup>6</sup>. Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee<sup>7</sup>. Regulations may require primary care trusts in the exercise of their functions relating to general ophthalmic services to consult local optical committees recognised by them<sup>8</sup>. The primary care trust may, on the request of any local optical committee recognised for their area, allot to that committee such sums for defraying the committee's administrative expenses<sup>9</sup> as may be determined by the primary care trust<sup>10</sup>.

A primary care trust may recognise a committee formed for its area, or for its area and that of one or more other primary care trusts, which it is satisfied is representative of every medical practitioner<sup>11</sup> who is providing general ophthalmic services in that area<sup>12</sup>. A committee so recognised is called the 'local medical committee' for the area for which it is formed<sup>13</sup>. Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee<sup>14</sup>. A primary care trust may, on the request of a local medical committee recognised by it, allot to that committee such sums for defraying the administrative expenses<sup>15</sup> for each year attributable to persons of whom it is representative as the trust may determine<sup>16</sup>; and deduct the amount of such sums from the remuneration of persons of whom the committee is representative under arrangements<sup>17</sup> entered into by them with the trust<sup>18</sup>.

1 The National Health Service Act 1977 ss 44, 45, 45A are repealed by the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, but continue to have effect in relation to England until the coming into force of the law relating to primary ophthalmic services: see ss 5, 8(4)-(6), Sch 3 Pt 1. As to the meaning of 'the law relating to primary ophthalmic services' see PARA 328 note 1. As to the meaning of 'England' see PARA 6 note 2. As to the provision of ophthalmic services in Wales see PARA 338.

2 As to primary care trusts see PARA 111.

3 As to the meaning of 'ophthalmic optician' see PARA 295 note 7.

4 As to the meaning of 'general ophthalmic services' see PARA 295.

5 National Health Service Act 1977 s 44(B2) (added by the National Health Service Reform and Health Care Professions Act 2002 s 5(1), (4); and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 4).

6 National Health Service Act 1977 s 44(B2) (as added and amended: see note 5).

7 National Health Service Act 1977 s 44(2) (amended by the National Health Service Reform and Health Care Professions Act 2002 ss 5(1), (5), 37(2), Sch 9 Pt 1).



8 See the National Health Service Act 1977 s 45(1ZA) (added by the National Health Service Reform and Health Care Professions Act 2002 s 5(8), (9)). At the date at which this volume states the law no such regulations had been made.

9 References to administrative expenses of a committee include references to travelling and subsistence allowances payable to its members: National Health Service Act 1977 s 45(5) (added by the Health Act 1999 s 11(1), (8)).

10 National Health Service Act 1977 s 45(2) (amended by the Health and Social Security Act 1984 Sch 3 para 7(b)(ii), Sch 8 Pt I; Health Authorities Act 1995 Sch 1 Pt I paras 1, 33; Health Act 1999 Sch 5; National Health Service Reform and Health Care Professions Act 2002 s 5(8), (12); National Health Service (Consequential Provisions) Act 2006 Sch 4). Any sums so allotted must be out of the moneys available to the primary care trust for the remuneration of persons of whom the committee so recognised is representative and who provide general ophthalmic services; and the amount of any such sums must be deducted from the remuneration of those persons in such manner as may be determined by the primary care trust: National Health Service Act 1977 s 45(3) (amended by the Health and Social Security Act 1984 Sch 3 para 7(c), Sch 8 Pt I; National Health Service Reform and Health Care Professions Act 2002 s 5(8), (12); Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 7, 22, Sch 14 Pt 4; National Health Service (Consequential Provisions) Act 2006 Sch 4).

11 As to the meaning of 'medical practitioner' see PARA 295 note 4.

12 See the National Health Service Act 1977 s 45A(1)(a), (3)(b) (s 45A added by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 7, 23).

13 National Health Service Act 1977 s 45A(5) (as added: see note 12).

14 National Health Service Act 1977 s 45A(6) (as added: see note 12).

15 References to the administrative expenses of a committee include the travelling and subsistence allowances payable to its members: National Health Service Act 1977 s 45A(13) (as added: see note 12).

16 See the National Health Service Act 1977 s 45A(10)(a), 11(a) (s 45A as added: see note 12).

17 Ie under the National Health Service Act 1977 s 38: see para 295.

18 See the National Health Service Act 1977 s 45A 11(b) (as added: see note 12).

## **UPDATE**

### **327 Local medical and optical committees**

NOTES 5, 12--National Health Service Act 1977 s 44(B2) further amended, s 45A amended: Health Act 2006 Sch 8 paras 16, 17, Sch 9.

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## ***B. PRIMARY OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 2006***

### **(A) DUTY TO PROVIDE PRIMARY OPHTHALMIC SERVICES**

#### **328. Primary ophthalmic services.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

Each primary care trust<sup>2</sup> must exercise its powers so as to provide or secure the provision, within its area, of the following primary ophthalmic services: (1) the sight-testing service<sup>3</sup>; (2) such other primary ophthalmic services as may be prescribed<sup>4</sup>; and (3) to the extent that it considers necessary to meet all reasonable requirements, any further primary ophthalmic services<sup>5</sup>. The sight-testing service is a service for testing the sight of all of the following persons (except any such testing which takes place in prescribed circumstances): (a) those aged under 16<sup>6</sup>; (b) those aged 16, 17 or 18 who are receiving qualifying full-time education<sup>7</sup>; (c) those whose resources must be treated in accordance with regulations as being less than or equal to their requirements<sup>8</sup>; (d) those aged 60 or over<sup>9</sup>; (e) those of such other description as may be prescribed<sup>10</sup>. Regulations may provide that services of a prescribed description must, or must not, be regarded as primary ophthalmic services<sup>11</sup> (but these regulations may not affect the duty in head (1) above)<sup>12</sup>.

A primary care trust may (in addition to any other power conferred on it) provide primary ophthalmic services itself (whether within or outside its area)<sup>13</sup>, or make such arrangements for their provision (whether within or outside its area) as it considers appropriate, and may in particular make contractual arrangements with any person<sup>14</sup>. A primary care trust must co-operate with each other primary care trust in the discharge of their respective functions<sup>15</sup> relating to the provision<sup>16</sup> of primary ophthalmic services<sup>17</sup>. Each primary care trust must publish information about such matters as may be prescribed in relation to the primary ophthalmic services provided under the National Health Service Act 2006<sup>18</sup>.

Regulations under these provisions<sup>19</sup> which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must be construed as a reference to that Act or instrument as it has effect at the time when the regulations are made<sup>20</sup>, or both as it has effect at that time and as amended subsequently<sup>21</sup>.

1 The National Health Service Act 2006 ss 115, 116 come into force immediately after, and to the extent that, the Health Act 2006 s 37 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 37 is repealed but such repeal does not take effect until s 37 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 s 37 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

Until the coming into force of the law relating to primary ophthalmic services, and notwithstanding any repeal or revocation made by the National Health Service (Consequential Provisions) Act 2006, no reference in the National Health Service Act 2006 to primary ophthalmic services, or to a general ophthalmic services contract, has effect, and the law as it applies in England relating to general ophthalmic services continues to have effect: see Sch 3 Pt 1 para 1. 'The law relating to primary ophthalmic services' means the Health Act 2006 ss 37-41, and Sch 8 paras 7-9, 11, 12(a), 13(2), (5), (6), 15-17, 21(b), 22, 29, 46 and 50: National Health Service

(Consequential Provisions) Act 2006, Sch 3 para 1(1). 'General ophthalmic services' means general ophthalmic services within the meaning of the National Health Service Act 1977 s 38 (see PARA 295); National Health Service (Consequential Provisions) Act 2006, Sch 3 para 1(2). As to the meaning of 'England' see PARA 6 note 2. As to transitional arrangements in relation to persons who, immediately before the coming into force of the Health Act 2006 s 38, were providing general ophthalmic services under the National Health Service Act 1977 see PARA 329. As to the provision of ophthalmic services in Wales see PARA 338.

2 As to primary care trusts see PARA 111.

3 National Health Service Act 2006 s 115(1)(a). Regulations may provide that a person whose sight is tested by a person who is a party to a general ophthalmic services contract (s 115(9)(a)), and who is shown during the testing or within a prescribed time after it to fall within any of heads (a)-(d) in the text (s 115(9)(b)), must be taken for the purposes of the testing to have so fallen immediately before his sight was tested (s 115(9)). In such a case, the testing of his sight must (unless it took place in circumstances prescribed under s 115(2) (see heads (a)-(d) in the text) be treated as a testing under the sight-testing service mentioned in s 115(1)(a) for the purposes of remuneration in respect of the testing (s 115(10)(a)), and for any such other purpose as may be prescribed (s 115(10)(b)). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'general ophthalmic services contract' see PARA 330. As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. 'Prescribed' means prescribed by regulations: s 275(1). At the date at which this volume states the law no such regulations had been made.

4 National Health Service Act 2006 s 115(1)(b). At the date at which this volume states the law no such regulations had been made.

5 National Health Service Act 2006 s 115(1)(c).

6 National Health Service Act 2006 s 115(2)(a). As to the time at which a person attains a particular age see PARA 36 note 7.

7 National Health Service Act 2006 s 115(2)(b). Regulations may prescribe what 'qualifying full-time education' is for these purposes: s 115(3)(a).

8 National Health Service Act 2006 s 115(2)(c). Regulations may make provision for these purposes about how a person's resources and requirements must be calculated: s 115(3)(b). Regulations under s 115(3)(b) may direct that a person's resources and requirements be calculated: (1) by a method set out in the regulations (s 116(3)(a)); (2) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than s 116 or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications (s 116(3)(b)); (3) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament (s 116(3)(c)); or (4) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament (s 116(3)(d)). As to the meaning of 'enactment' see PARA 10 note 7. At the date at which this volume states the law no such regulations had been made.

9 National Health Service Act 2006 s 115(2)(d).

10 National Health Service Act 2006 s 115(2)(e). Descriptions of persons may be prescribed under s 115(2)(e) by reference to any criterion, including the following: (1) their age (s 116(2)(a)); (2) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition (s 116(2)(b)); (3) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances (s 116(2)(c)); (4) their receipt of benefit in money or kind under any enactment or their entitlement to receive any such benefit (s 116(2)(d)); (5) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits (s 116(2)(e)). At the date at which this volume states the law no such regulations had been made.

11 Ie for the purposes of the National Health Service Act 2006.

12 National Health Service Act 2006 s 115(7). Such regulations may in particular describe services by reference to the manner or circumstances in which they are provided: s 115(8). At the date at which this volume states the law no such regulations had been made.

13 National Health Service Act 2006 s 115(4)(a).

14 National Health Service Act 2006 s 115(4)(b).

15 As to the meaning of 'functions' see PARA 6 note 3.

- 16    le under the National Health Service Act 2006.
- 17    National Health Service Act 2006 s 115(6).
- 18    National Health Service Act 2006 s 115(5). At the date at which this volume states the law no such regulations had been made.
- 19    le under the National Health Service Act 2006 s 115.
- 20    National Health Service Act 2006 s 116(1)(a).
- 21    National Health Service Act 2006 s 116(1)(b).

## **UPDATE**

### **328 Primary ophthalmic services**

TEXT AND NOTE 1--Appointed day is 1 August 2008: SI 2008/1972.

NOTE 4--See the Primary Ophthalmic Services Regulations 2008, SI 2008/1186, reg 2A (sight-testing services) (added by SI 2010/634).

NOTE 5--See the Primary Ophthalmic Services Regulations 2008, SI 2008/1186, reg 7.

NOTE 18--See SI 2008/1186 reg 8.

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### **329. Transitional provision in respect of existing service providers.**

The Secretary of State<sup>1</sup> must in regulations<sup>2</sup> make transitional provision in respect of persons<sup>3</sup> who, immediately before the specified time<sup>4</sup>, are providing general ophthalmic services<sup>5</sup> in England<sup>6</sup>. The regulations may:

- 186 (1) provide that, in such circumstances as the regulations may specify, a primary care trust<sup>7</sup> must, if any such person so wishes, enter into a general ophthalmic services contract<sup>8</sup> with him; and the regulations may make provision as to the terms of any such contract<sup>9</sup>;
- 187 (2) provide that, in such circumstances as the regulations may specify, a primary care trust must, if any such person so wishes, enter into a contract with him, containing such terms as the regulations may specify, for the provision of ophthalmic services<sup>10</sup>;
- 188 (3) make provision for the resolution of disputes in relation to any contract entered into, or proposed to be entered into, under head (1) or (2) above, including provision for the determination of disputes by the Secretary of State or a person appointed by him<sup>11</sup>;
- 189 (4) make provision in respect of a period beginning before the coming into force of the provision or before the specified time<sup>12</sup>, but such provision must not as a whole be detrimental to the remuneration of the persons to whom it relates<sup>13</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the making of such regulations see PARA 828. As to the regulations made see the Primary Ophthalmic Services Transitional Provisions Regulations 2008, SI 2008/1209.

3 As to the meaning of 'person' see PARA 17 note 2.

4 Ie immediately before the coming into force of the Health Act 2006 s 38: see PARA 330 note 1.

5 Ie under the National Health Service Act 1977 s 38: see PARA 295.

6 Health Act 2006 s 43(1) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 281, 283(a)). As to the meaning of 'England' see PARA 6 note 2.

7 As to primary care trusts see PARA 111. As to the duty of primary care trusts to provide primary ophthalmic services see PARA 328.

8 'General ophthalmic services contract' means a contract under the National Health Service Act 2006 s 117 (see PARA 330): Health Act 2006 s 43(6) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 281, 283(b)).

9 Health Act 2006 s 43(2).

10 Health Act 2006 s 43(3).

11 Health Act 2006 s 43(4).

12 Ie before the coming into force of the Health Act 2006 s 38: see PARA 330 note 1.

13 Health Act 2006 s 43(5).

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## (B) GENERAL OPHTHALMIC SERVICES CONTRACTS

### 330. General ophthalmic services contracts.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A primary care trust<sup>2</sup> may enter<sup>3</sup> into a general ophthalmic services contract<sup>4</sup> under which primary ophthalmic services<sup>5</sup> are provided<sup>6</sup>. A general ophthalmic services contract may make such provision as may be agreed between the primary care trust and the contractor<sup>7</sup> or contractors in relation to the services to be provided under the contract<sup>8</sup>, remuneration under the contract<sup>9</sup>, and any other matters<sup>10</sup>. The services to be provided under a general ophthalmic services contract may include services which are not primary ophthalmic services<sup>11</sup>, and services to be provided outside the area of the primary care trust<sup>12</sup>.

1 The National Health Service Act 2006 s 117 comes into force immediately after, and to the extent that, the Health Act 2006 s 38 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 38 is repealed but such repeal does not take effect until s 38 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 s 38 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to primary care trusts see PARA 111.

3 In accordance with the provisions of the National Health Service Act 2006 ss 118-125: see PARAS 331-337.

4 See the National Health Service Act 2006 s 117(2). As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.

5 As to primary ophthalmic services see PARA 328.

6 National Health Service Act 2006 s 117(1). As to transitional arrangements in relation to persons who, immediately before the coming into force of the Health Act 2006 s 38 (see note 1), were providing general ophthalmic services under the National Health Service Act 1977 see PARA 329. As to the provision of ophthalmic services in Wales see PARA 338. Any person providing primary ophthalmic services under a contract under the National Health Service Act 2006 s 117 is a public authority for the purposes of the Freedom of Information Act 2000 in respect of information relating to the provision of those services: see s 3, Sch 1 Pt III (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 para 68; National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(j); Health Act 2006 Sch 8 para 45(1), (2)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

7 'Contractor', in relation to a general ophthalmic services contract, means any person entering into the contract with the primary care trust: National Health Service Act 2006 s 117(5). As to the meaning of 'person' see PARA 17 note 2. As to the persons eligible to enter into general ophthalmic services contracts see PARA 331.

8 National Health Service Act 2006 s 117(3)(a).

9 National Health Service Act 2006 s 117(3)(b). As to payments under general ophthalmic services contracts see PARA 332.

10 National Health Service Act 2006 s 117(3)(c).

11 National Health Service Act 2006 s 117(4)(a).

12 National Health Service Act 2006 s 117(4)(b).

**UPDATE**

**330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

**330-334 General Ophthalmic Services Contracts**

As to provision for general ophthalmic service contracts in England see the General Ophthalmic Services Contracts Regulations 2008, SI 2008/1185 (amended by SI 2008/1700, SI 2009/309, SI 2010/634), which make provision in relation to contractors (SI 2008/1185 regs 3-6), pre-contract dispute resolution (reg 7), health service body status (reg 8), and the required terms of contracts (regs 9-19, Schs 1-4).



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### **331. Persons eligible to enter contracts.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A primary care trust<sup>2</sup> may, subject to such conditions and exceptions as may be prescribed<sup>3</sup>, enter into a general ophthalmic services contract<sup>4</sup> with any person<sup>5</sup>. However, a trust may not enter into such a contract with a person who has been disqualified from doing so by an order<sup>6</sup> of disqualification<sup>7</sup>.

The Secretary of State may make regulations conferring on a primary care trust, or another prescribed person, a right to apply to the Family Health Services Appeal Authority<sup>8</sup> in prescribed circumstances for an order that a person be disqualified from entering into a general ophthalmic services contract<sup>9</sup>. The regulations may in particular provide for the review by the Family Health Services Appeal Authority of an order of disqualification made by virtue of such regulations<sup>10</sup>, and what will happen in relation to general ophthalmic services contracts to which the person concerned is a party when the order is made<sup>11</sup>.

1 The National Health Service Act 2006 ss 118, 119 come into force immediately after, and to the extent that, the Health Act 2006 s 38 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 38 is repealed but such repeal does not take effect until s 38 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 s 38 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to primary care trusts see PARA 111.

3 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1). As to the making of regulations see PARA 9. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. At the date at which this volume states the law no such regulations had been made.

4 As to the meaning of 'general ophthalmic services contract' see PARA 330. As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.

5 National Health Service Act 2006 s 118(1). As to the meaning of 'person' see PARA 17 note 2. As to the provision of ophthalmic services in Wales see PARA 338.

6 Is an order made by virtue of regulations under the National Health Service Act 2006 s 119: see the text to notes 8-11.

7 National Health Service Act 2006 s 118(2).

8 As to the Family Health Services Appeal Authority see PARA 443.

9 National Health Service Act 2006 s 119(1). At the date at which this volume states the law no such regulations had been made.

10 National Health Service Act 2006 s 119(2)(a).

11 National Health Service Act 2006 s 119(2)(b).

### **UPDATE**

### **330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

### **330-334 General Ophthalmic Services Contracts**

As to provision for general ophthalmic service contracts in England see the General Ophthalmic Services Contracts Regulations 2008, SI 2008/1185 (amended by SI 2008/1700, SI 2009/309, SI 2010/634), which make provision in relation to contractors (SI 2008/1185 regs 3-6), pre-contract dispute resolution (reg 7), health service body status (reg 8), and the required terms of contracts (regs 9-19, Schs 1-4).

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### **332. Payments.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> may give directions<sup>3</sup> as to payments<sup>4</sup> to be made under general ophthalmic services contracts<sup>5</sup>. A direction may in particular: (1) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance<sup>6</sup>; (2) provide for payments to be made by reference to any scheme or scale specified in the direction<sup>7</sup>, or a determination made by any person<sup>8</sup> in accordance with factors specified in the direction<sup>9</sup>; (3) provide for the making of payments in respect of individual practitioners<sup>10</sup>; (4) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a primary care trust<sup>11</sup> only if it is satisfied as to certain conditions)<sup>12</sup>; (5) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates<sup>13</sup>. Before giving a direction, the Secretary of State must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate<sup>14</sup>, and may consult such other persons as he considers appropriate<sup>15</sup>.

A general ophthalmic services contract must require payments to be made under the contract in accordance with such directions<sup>16</sup>.

1 The National Health Service Act 2006 s 120 comes into force immediately after, and to the extent that, the Health Act 2006 s 38 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 38 is repealed but such repeal does not take effect until s 38 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 s 38 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the provision of ophthalmic services in Wales see PARA 338.

3 Such a direction must be given by regulations or instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the making of regulations see PARA 9. As to the meaning of 'writing' see PARA 7 note 2. At the date at which this volume states the law no such regulations had been made.

4 'Payments' includes fees, allowances, reimbursements, loans and repayments: National Health Service Act 2006 s 120(5).

5 National Health Service Act 2006 s 120(1). As to the meaning of 'general ophthalmic services contract' see PARA 330. As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.

6 National Health Service Act 2006 s 120(3)(a).

7 National Health Service Act 2006 s 120(3)(b)(i).

8 As to the meaning of 'person' see PARA 17 note 2.

9 National Health Service Act 2006 s 120(3)(b)(ii).

10 National Health Service Act 2006 s 120(3)(c).

11 As to primary care trusts see PARA 111.

- 12 National Health Service Act 2006 s 120(3)(d).
- 13 National Health Service Act 2006 s 120(3)(e).
- 14 National Health Service Act 2006 s 120(4)(a). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.
- 15 National Health Service Act 2006 s 120(4)(b).
- 16 National Health Service Act 2006 s 120(2).

## **UPDATE**

### **330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

### **330-334 General Ophthalmic Services Contracts**

As to provision for general ophthalmic service contracts in England see the General Ophthalmic Services Contracts Regulations 2008, SI 2008/1185 (amended by SI 2008/1700, SI 2009/309, SI 2010/634), which make provision in relation to contractors (SI 2008/1185 regs 3-6), pre-contract dispute resolution (reg 7), health service body status (reg 8), and the required terms of contracts (regs 9-19, Schs 1-4).

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### **333. Other required terms.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A general ophthalmic services contract<sup>2</sup> must contain such provision<sup>3</sup> as may be prescribed<sup>4</sup>. The regulations may in particular make provision as to: (1) the manner in which, and standards to which, services must be provided<sup>5</sup>; (2) the persons<sup>6</sup> who perform services<sup>7</sup>; (3) the persons to whom services will be provided<sup>8</sup>; (4) the variation of contract terms (other than required terms)<sup>9</sup>; (5) rights of entry and inspection (including inspection of clinical records and other documents)<sup>10</sup>; (6) the circumstances in which, and the manner in which, the contract may be terminated<sup>11</sup>; (7) enforcement<sup>12</sup>; (8) the adjudication of disputes<sup>13</sup>. The regulations must make provision as to the right of persons to whom services are provided to choose the persons from whom they receive them<sup>14</sup>.

1 The National Health Service Act 2006 s 121 comes into force immediately after, and to the extent that, the Health Act 2006 s 38 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 38 is repealed but such repeal does not take effect until s 38 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 s 38 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'general ophthalmic services contract' see PARA 330. As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.

3 In addition to the provision required by National Health Service Act 2006 ss 115-120 (see PARAS 328-332): s 121(1).

4 National Health Service Act 2006 s 121(1). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the making of regulations see PARA 9. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. At the date at which this volume states the law no such regulations had been made. As to the provision of ophthalmic services in Wales see PARA 338.

5 National Health Service Act 2006 s 121(2)(a).

6 As to the meaning of 'person' see PARA 17 note 2.

7 National Health Service Act 2006 s 121(2)(b).

8 National Health Service Act 2006 s 121(2)(c).

9 National Health Service Act 2006 s 121(2)(d). 'Required terms' are terms required by or under Pt 6 (ss 115-125): s 121(2)(d). Regulations under s 121(2)(d) may: (1) make provision as to the circumstances in which a primary care trust may impose a variation of contract terms (s 121(3)(a)); (2) make provision as to the suspension or termination of any duty under the contract to provide services of a prescribed description (s 121(3)(b)). Regulations making provision of the kind described in s 121(3)(b) may prescribe services by reference to the manner or circumstances in which they are provided: s 121(4). As to primary care trusts see PARA 111.

10 National Health Service Act 2006 s 121(2)(e).

11 National Health Service Act 2006 s 121(2)(f).

12 National Health Service Act 2006 s 121(2)(g).

13 National Health Service Act 2006 s 121(2)(h).

14 National Health Service Act 2006 s 121(5).

## **UPDATE**

### **330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

### **330-334 General Ophthalmic Services Contracts**

As to provision for general ophthalmic service contracts in England see the General Ophthalmic Services Contracts Regulations 2008, SI 2008/1185 (amended by SI 2008/1700, SI 2009/309, SI 2010/634), which make provision in relation to contractors (SI 2008/1185 regs 3-6), pre-contract dispute resolution (reg 7), health service body status (reg 8), and the required terms of contracts (regs 9-19, Schs 1-4).

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### **334. Disputes and enforcement.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> may make provision for the resolution of disputes as to the terms of a proposed general ophthalmic services contract<sup>3</sup>. The regulations may make provision: (1) for the referral of the terms of the proposed contract to the Secretary of State<sup>4</sup>, and for the Secretary of State, or a person<sup>5</sup> appointed by him, to determine the terms on which the contract may be entered into<sup>6</sup>; (2) for a person or persons entering into a general ophthalmic services contract to be regarded<sup>7</sup>, in circumstances where he or they so elect, as a health service body, but only so far as concerns the general ophthalmic services contract (and not for any other purpose)<sup>8</sup>.

1 The National Health Service Act 2006 s 122 comes into force immediately after, and to the extent that, the Health Act 2006 s 38 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 38 is repealed but such repeal does not take effect until s 38 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 s 38 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

3 National Health Service Act 2006 s 122(1). As to the meaning of 'general ophthalmic services contract' see PARA 330. As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338.

4 National Health Service Act 2006 s 122(2)(a). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

5 As to the meaning of 'person' see PARA 17 note 2.

6 National Health Service Act 2006 s 122(2)(b).

7 Ie for the purposes of the National Health Service Act 2006 s 9: see PARAS 228, 229.

8 National Health Service Act 2006 s 122(3). Regulations under s 122(3) may include provision as to the application of s 9 in cases where persons practising in partnership elect to become a health service body, and there is a change in the membership of the partnership: s 122(4). Where: (1) by virtue of regulations under s 122(3), s 9(11) (see PARA 229) applies in relation to a general ophthalmic services contract (s 122(5)(a)); and (2) a direction as to payments is made under that provision in relation to the contract (s 122(5)(b)), the direction is enforceable in a county court (if the court so orders) as if it were a judgment or order of that court (s 122(5)). As to partnership see **PARTNERSHIP**. As to county courts see **COURTS** vol 10 (Reissue) PARA 701 et seq.

## **UPDATE**

### **330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

### **330-334 General Ophthalmic Services Contracts**

As to provision for general ophthalmic service contracts in England see the General Ophthalmic Services Contracts Regulations 2008, SI 2008/1185 (amended by SI 2008/1700, SI 2009/309, SI 2010/634), which make provision in relation to contractors (SI 2008/1185 regs 3-6), pre-contract dispute resolution (reg 7), health service body status (reg 8), and the required terms of contracts (regs 9-19, Schs 1-4).



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## (C) PERFORMANCE OF PRIMARY OPHTHALMIC SERVICES

### **335. Persons performing primary ophthalmic services.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> may provide that a health care professional<sup>3</sup> of a prescribed<sup>4</sup> description may not perform any primary ophthalmic service<sup>5</sup> for which a primary care trust is responsible<sup>6</sup> unless he is included in a list maintained under the regulations by a primary care trust<sup>7</sup>. The regulations may make provision in relation to such lists and in particular as to: (1) the preparation, maintenance and publication of a list<sup>8</sup>; (2) eligibility for inclusion in a list<sup>9</sup>; (3) applications for inclusion (including provision as to the primary care trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application)<sup>10</sup>; (4) the grounds on which an application for inclusion may or must be granted or refused<sup>11</sup>; (5) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits)<sup>12</sup>; (6) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal)<sup>13</sup>; (7) circumstances in which a person included in a list may not withdraw from it<sup>14</sup>; (8) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him)<sup>15</sup>; (9) the criteria to be applied in making decisions under the regulations<sup>16</sup>; (10) appeals against decisions made by a primary care trust under the regulations<sup>17</sup>; (11) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals<sup>18</sup>; and (12) disqualification of practitioners<sup>19</sup>.

The regulations may, in particular, also provide for: (a) a person's inclusion in a list to be subject to conditions determined by a primary care trust<sup>20</sup>; (b) a primary care trust to vary the conditions or impose different ones<sup>21</sup>; (c) the consequences of failing to comply with a condition (including removal from a list)<sup>22</sup>; (d) the review by a primary care trust of decisions made by it by virtue of the regulations<sup>23</sup>; (e) the qualifications and experience which a medical practitioner<sup>24</sup> who applies for inclusion in a list must have<sup>25</sup>.

1 The National Health Service Act 2006 s 123 comes into force immediately after, and to the extent that, the Health Act 2006 s 39 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 39 is repealed but such repeal does not take effect until s 39 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 s 39 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

3 'Health care professional' means a person who is a member of a profession regulated by a body mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294): National Health Service Act 2006 s 123(2)(a). As to the meaning of 'person' see PARA 17 note 2.

4 'Prescribed' means prescribed by regulations: see the National Health Service Act 2006 s 275(1).

5 As to primary ophthalmic services see PARA 328. As to references to primary ophthalmic services until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.

6 A primary care trust is responsible for an ophthalmic service if it provides the service, or secures its provision, by or under any enactment: National Health Service Act 2006 s 123(2)(b). As to primary care trusts see PARA 111. As to the power of primary care trusts to enter into contracts for the provision of primary ophthalmic services see PARA 330. As to the meaning of 'enactment' see PARA 10 note 7.

7 National Health Service Act 2006 s 123(1). As to the provision of ophthalmic services in Wales see PARA 338.

8 National Health Service Act 2006 s 123(3)(a).

9 National Health Service Act 2006 s 123(3)(b).

10 National Health Service Act 2006 s 123(3)(c).

11 National Health Service Act 2006 s 123(3)(d).

12 National Health Service Act 2006 s 123(3)(e).

13 National Health Service Act 2006 s 123(3)(f).

14 National Health Service Act 2006 s 123(3)(g).

15 National Health Service Act 2006 s 123(3)(h).

16 National Health Service Act 2006 s 123(3)(i).

17 National Health Service Act 2006 s 123(3)(j).

18 National Health Service Act 2006 s 123(3)(k). Regulations making provision as to such matters may in particular authorise the disclosure of information by a primary care trust to the Secretary of State (s 123(7)(a)), and by the Secretary of State to a primary care trust (s 123(7)(b)).

19 See the National Health Service Act 2006 s 123(3). Such provision may be any provision corresponding to anything in ss 151-159 (see PARAS 388, 390, 394, 395, 397, 401, 402): see s 123(3).

20 National Health Service Act 2006 s 123(4)(a). The imposition of such conditions must be with a view to preventing any prejudice to the efficiency of the services to which a list relates (s 123(5)(a)), or preventing fraud (s 123(5)(b)).

21 National Health Service Act 2006 s 123(4)(b). See also note 20.

22 National Health Service Act 2006 s 123(4)(c).

23 National Health Service Act 2006 s 123(4)(d).

24 As to the meaning of 'medical practitioner' see PARA 84 note 7.

25 See the National Health Service Act 2006 s 123(6). Regulations making such provision may: (1) provide for the practitioner to show to the satisfaction of a committee recognised by the Secretary of State for the purpose that he possesses such qualifications and experience (s 123(6)(a)); (2) confer on a person who is dissatisfied with the determination of such a committee a right of appeal to a committee appointed by the Secretary of State (s 123(6)(b)); and (3) provide for anything which appears to the Secretary of State to be appropriate in connection with that right of appeal (s 123(6)(c)).

## UPDATE

### **330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

### **335 Persons performing primary ophthalmic services**

TEXT AND NOTES-For provision as to ophthalmic performers lists see PARAS 335A-335D.

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### **335A. Ophthalmic performers lists.**

An ophthalmic practitioner may not perform any primary ophthalmic services, unless his name is included in an ophthalmic performers list: National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 35(1) (regs 34-37 added by SI 2008/1187). An 'ophthalmic practitioner' means either a registered optometrist, who is not a corporate body, or an OMP; 'OMP' means a registered medical practitioner, who has been recognised as an ophthalmic medical practitioner under SI 2004/585 regs 36, 37: reg 34(2). In respect of any ophthalmic practitioner, whose name is included in an ophthalmic performers list, the list must include (1) his full name; (2) his professional registration number with suffixed to it, the organisational code given by the Secretary of State to the primary care trust, prefixed to it, the initials OPL; (3) his date of birth, where he consents, or where he does not consent, the date of his first registration in the register; (4) whether he is a contractor; (5) if he is an OMP, that fact and the date of his approval as an OMP under reg 37(3) or 38(3); and (6) the date that his name was included in the ophthalmic performers list or, if his name was previously included in any ophthalmic list or ophthalmic supplementary list of a primary care trust, the date that it was first included in such a list: reg 35(2). 'Professional registration number' means the number against the ophthalmic practitioner's name in the register; 'register' means in the case of an optometrist, the register maintained by the General Optical Council under the Opticians Act 1989 s 7(a) or 8B(1)(a) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 838), in the case of an OMP, the register of medical practitioners; 'contractor' means an ophthalmic practitioner, who both provides primary ophthalmic services under a general ophthalmic services contract under the National Health Service Act 2006 s 117 (see PARA 330) and performs such services; 'ophthalmic list' means the list prepared by a primary care trust under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, reg 6 (see PARA 299); 'ophthalmic supplementary list' means the list prepared by a primary care trust under the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005, SI 2005/480 (see PARA 299). As to the prescribed qualifications and experience which a registered medical practitioner is to possess to be recognised as an ophthalmic medical practitioner see SI 2004/585 reg 36. A registered medical practitioner who wishes to establish his status as an OMP must apply to the Committee for approval of his qualifications and experience as it may require: reg 37(1). 'The Committee' means the Ophthalmic Qualifications Committee appointed by organisations representative of the medical profession as may be recognised by the Secretary of State for the purposes of approving (a) ophthalmic hospitals, academic degrees, academic or post graduate courses in ophthalmology and appointments affording special opportunities for acquiring the necessary skill and experience of the kind required for the provision of primary ophthalmic service; and (b) the qualifications of doctors for the purpose of primary ophthalmic services; 'ophthalmic hospital' includes an ophthalmic department of a hospital: reg 34 (amended by SI 2008/1700). As to the Committee's consideration and determination of the application see SI 2004/585 reg 37(2)-(5).

### **UPDATE**

### **330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

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**335B. Appeals from Ophthalmic Qualifications Committee.**

Any person dissatisfied with a determination of the Committee that he is not qualified to be an OMP may, within one month from the date on which he received notice of that determination, or such longer period as the Secretary of State may at any time allow, appeal against the determination by sending to the Secretary of State a notice of appeal stating the facts and contentions on which he relies: National Health Service (Performers Lists) Regulations, SI 2004/585, reg 38(1) (regs 38, 42 added by SI 2008/1187). For the meaning of 'the Committee' and 'OMP' see PARA 335A. As to the appeal committee appointed to determine the appeal see reg 38(2)-(9). An ophthalmic practitioner may also appeal, under reg 15 (see PARA 258), against a decision of the primary care trust to refuse to include his name in its ophthalmic performers list under reg 40(1) (see PARA 335D): reg 42.

**UPDATE**

**330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(5) THE HEALTH SERVICES/(iii) Ophthalmic Services/B. PRIMARY OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE ACT 2006/(C) Performance of Primary Ophthalmic Services/335C. Application for inclusion in an ophthalmic performers list.

**335C. Application for inclusion in an ophthalmic performers list.**

In addition to the information required by the National Health Service (Performers Lists) Regulations, SI 2004/585, reg 4(2) (see PARA 249), the ophthalmic practitioner, when making an application for the inclusion of his name in an ophthalmic performers list, must give the following information (1) his professional qualifications and where they were obtained, with evidence concerning his qualifications and experience, including, if he seeks inclusion as an OMP, evidence of his approval as an OMP under reg 37 (see para 335A) or reg 38 (see PARA 335B); (2) a declaration that he is included in the register; (3) his professional registration number and date of first registration; (4) whether he is a contractor; and (5) whether he is a contractor for more than one scheme and, if so, which schemes and which of those schemes is the relevant scheme: reg 39(1) (reg 39 added by SI 2008/1187). For the meanings of 'ophthalmic practitioner', 'OMP' and 'contractor' see PARA 335A. As to further undertakings required by the ophthalmic practitioner see reg 39(2). Any person who is not an optometrist, but expects to become so on successful completion of his training, may make an application to a primary care trust not less than three months before he anticipates his being entered on the register: reg 39(3). As to what such an application must contain, see reg 39(4). As to a decision on an applicant under reg 39(2), see reg 39(5).

**UPDATE**

**330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

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**335D. Additional grounds for refusal.**

In addition to the grounds in the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 6(1) (see PARA 250) a primary care trust may also refuse to admit an ophthalmic practitioner to its ophthalmic performers list if (1) having checked the information provided under reg 39(1) (see PARA 335C), it considers he is unsuitable to be included in its list; (2) in the case of an OMP, reg 24(1)(b), (c), (d) or (e) (see PARA 264) applies to him; or (3) in the case of an optometrist, his registration in the register is subject to conditions imposed under the Opticians Act 1989 s 13F (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 846A.5) or he is the subject of an order pursuant to s 13H (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 846A.6): SI 2004/585 reg 40(1) (reg 40 added by SI 2008/1187). For the meaning of 'ophthalmic practitioner' and 'OMP' see PARA 335C. In addition to the grounds in reg 6(2) (see PARA 250), a primary care trust, must also refuse to admit an ophthalmic practitioner to its ophthalmic performers list if he is a contractor and the relevant scheme is not one that lies within its area, or he is included in the ophthalmic performers list of another primary care trust, unless he has given notice to that trust that he wishes to withdraw from that list: reg 40(2). As to the prescribed day and the primary care trust duty to check the information provided under reg 39, see reg 40(3), (4). As to grounds for removal from an ophthalmic performers list, see reg 41.

**UPDATE**

**330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.



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## (D) ASSISTANCE AND SUPPORT

### **336. Assistance and support.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A primary care trust<sup>2</sup> may provide assistance<sup>3</sup> or support to any person<sup>4</sup> providing or proposing to provide primary ophthalmic services<sup>5</sup> under a general ophthalmic services contract<sup>6</sup>. The assistance or support provided by a primary care trust is provided on such terms, including terms as to payment, as the trust considers appropriate<sup>7</sup>.

1 The National Health Service Act 2006 s 124 comes into force immediately after, and to the extent that, the Health Act 2006 s 40 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 40 is repealed but such repeal does not take effect until s 40 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 s 40 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to primary care trusts see PARA 111.

3 'Assistance' includes financial assistance: National Health Service Act 2006 s 124(3).

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to primary ophthalmic services see PARA 328. As to references to primary ophthalmic services until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.

6 National Health Service Act 2006 s 124(1). As to the meaning of 'general ophthalmic services contract' see PARA 330. As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1. As to the provision of ophthalmic services in Wales see PARA 338.

7 National Health Service Act 2006 s 124(2).

## **UPDATE**

### **330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

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## (E) LOCAL OPTICAL COMMITTEES

### 337. Local optical committees.

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A primary care trust<sup>2</sup> may recognise a local optical committee<sup>3</sup> formed for its area, or for its area and that of one or more other primary care trusts, which it is satisfied is representative of<sup>4</sup>:

- 190 (1) each person<sup>5</sup> who, under a general ophthalmic services contract<sup>6</sup> entered into by him, is providing primary ophthalmic services<sup>7</sup> in the area for which the committee is formed<sup>8</sup>; and
- 191 (2) each optometrist<sup>9</sup> not falling within head (1) above who is performing primary ophthalmic services in the area for which the committee is formed, whether under arrangements where a primary care trust is providing the services itself<sup>10</sup> or under a general ophthalmic services contract<sup>11</sup>, and who has notified the trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented)<sup>12</sup>.

Any such committee may co-opt persons not falling within head (1) or (2) above on such terms as it considers appropriate<sup>13</sup>. Any such committee may delegate any of its functions<sup>14</sup>, with or without restrictions or conditions, to sub-committees composed of members of that committee<sup>15</sup>. Regulations<sup>16</sup> may require a primary care trust, in the exercise of its functions relating to primary ophthalmic services, to consult any local optical committee recognised by it on such occasions and to such extent as may be prescribed<sup>17</sup>. A recognised local optical committee has such other functions as may be prescribed<sup>18</sup>.

A recognised local optical committee must in respect of each year determine the amount of its administrative expenses for that year<sup>19</sup>. A primary care trust may: (a) on the request of a local optical committee recognised by it, allot to that committee such sums as the trust may determine for defraying the committee's administrative expenses<sup>20</sup>; and (b) deduct the amount of such sums from the remuneration of persons of whom the committee is representative under head (1) above under the general ophthalmic services contracts entered into by those persons with the trust<sup>21</sup>.

1 The National Health Service Act 2006 s 125 comes into force immediately after, and to the extent that, the Health Act 2006 s 41 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 41 is repealed but such repeal does not take effect until s 41 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 s 41 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to primary care trusts see PARA 111.

3 A committee recognised under the National Health Service Act 2006 s 125 is called the local optical committee for the area for which it is formed: s 125(4).

- 4 National Health Service Act 2006 s 125(1). As to the provision of ophthalmic services in Wales see PARA 338.
- 5 As to the meaning of 'person' see PARA 17 note 2.
- 6 As to the meaning of 'general ophthalmic services contract' see PARA 330. As to references to general ophthalmic services contracts until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.
- 7 As to primary ophthalmic services see PARA 328. As to references to primary ophthalmic services until such time as the law relating to primary ophthalmic services comes into force see PARA 328 note 1.
- 8 National Health Service Act 2006 s 125(1)(a), (2).
- 9 'Optometrist' means a person registered in the register of optometrists maintained under the Opticians Act 1989 s 7 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 838) or a body corporate registered in the register of bodies corporate maintained under s 9 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 841, 842) carrying on business as an optometrist: National Health Service Act 2006 s 275(1). Until such time as the Health Act 2006 s 80, Sch 8 para 24(b) is brought into force this definition must be read as a reference to an 'ophthalmic optician' (see PARA 295 note 6): see the National Health Service Act 2006 s 277(3)(o), (4), (5); National Health Service (Consequential Provisions) Act 2006 s 5, Sch 3 para 4. The Health Act 2006 Sch 8 para 24(b) comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed.
- 10 le under the National Health Service Act 2006 s 115(4)(a): see PARA 328.
- 11 National Health Service Act 2006 s 125(1)(b), (3)(a).
- 12 National Health Service Act 2006 s 125(1)(b), (3)(b).
- 13 National Health Service Act 2006 s 125(6).
- 14 As to the meaning of 'functions' see PARA 6 note 3.
- 15 National Health Service Act 2006 s 125(5).
- 16 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.
- 17 National Health Service Act 2006 s 125(7). 'Prescribed' means prescribed by regulations: s 275(1).
- 18 National Health Service Act 2006 s 125(8).
- 19 National Health Service Act 2006 s 125(9). The administrative expenses of a committee include the travelling and subsistence allowances payable to its members: s 125(11).
- 20 National Health Service Act 2006 s 125(10)(a).
- 21 National Health Service Act 2006 s 125(10)(b).

## **UPDATE**

### **330-337 General ophthalmic services contracts ... Local optical committees**

These provisions have effect as from 1 August 2008: SI 2008/1972.

### **337 Local optical committees**

NOTE 9--Health Act 2006 Sch 8 para 24(b) in force 1 August 2008: SI 2008/1972.

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General ophthalmic services in Wales.

### ***C. GENERAL OPHTHALMIC SERVICES UNDER THE NATIONAL HEALTH SERVICE (WALES) ACT 2006***

#### **338. General ophthalmic services in Wales.**

The provision of ophthalmic services in Wales<sup>1</sup> differs from that in England<sup>2</sup>. Under the National Health Service (Wales) Act 2006 it is the duty of each local health board<sup>3</sup> to make arrangements as respects its area for securing sight tests of children, persons whose resources fall to be treated as being less than or equal to their requirements, and persons of such other description as may be prescribed by regulations<sup>4</sup>. Services provided under such arrangements are known as 'general ophthalmic services'<sup>5</sup>. Provision is made as to the matters which must be covered by regulations relating to the making of such arrangements<sup>6</sup>, the qualifications to be held by persons providing services under the arrangements<sup>7</sup>, and the remuneration to be paid to such persons<sup>8</sup>. A local health board may recognise a local optical committee for its area or for its area and that of one or more other local health boards<sup>9</sup>.

Powers are given to the Welsh Ministers<sup>10</sup> in cases where they are satisfied that the provision of ophthalmic services is inadequate, enabling them to authorise a local health board to make alternative arrangements or to make such arrangements themselves, and to make arrangements in exceptional circumstances<sup>11</sup>. The Welsh Ministers may make accommodation available to providers of ophthalmic services<sup>12</sup>.

1 As to the meaning of 'Wales' see PARA 6 note 2.

2 As to the provision of ophthalmic services in England see PARAS 295-337.

3 As to local health boards see PARA 75.

4 See the National Health Service (Wales) Act 2006 s 71. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service (Wales) Act 2006 ss 71-78: the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see PARAS 296-326); the National Health Service (Optical Charges and Payments) Regulations 1997, SI 1997/818 (see PARAS 473, 474); the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006, SI 2006/181.

5 See the National Health Service (Wales) Act 2006 s 71(10).

6 See the National Health Service (Wales) Act 2006 ss 72, 74. As to the regulations made see note 4.

7 See the National Health Service (Wales) Act 2006 s 73.

8 See the National Health Service (Wales) Act 2006 ss 76, 77.

9 See the National Health Service (Wales) Act 2006 s 78.

10 As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

11 See the National Health Service (Wales) Act 2006 s 75.

12 See the National Health Service (Wales) Act 2006 s 79.



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#### **(iv) Pharmaceutical Services**

### **A. PROVISION OF PHARMACEUTICAL SERVICES**

#### **(A) IN GENERAL**

#### **339. Arrangements for pharmaceutical services.**

Each primary care trust<sup>1</sup> must, in accordance with regulations<sup>2</sup>, make arrangements<sup>3</sup> as respects the area of the primary care trust for the provision to persons who are in that area of:

- 192 (1) proper and sufficient drugs and medicines<sup>4</sup> and listed<sup>5</sup> appliances which are ordered for those persons by a medical practitioner<sup>6</sup> in pursuance of his functions<sup>7</sup> in the health service<sup>8</sup>, the Scottish health service<sup>9</sup>, the Northern Ireland health service<sup>10</sup> or the armed forces of the Crown<sup>11</sup>;
- 193 (2) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner<sup>12</sup> in pursuance of his functions in the health service, the Scottish health service or the Northern Ireland health service (other than functions exercised in pursuance of the provision of services mentioned in head (3) below)<sup>13</sup>, or his functions in the armed forces of the Crown<sup>14</sup>;
- 194 (3) listed drugs and medicines and listed appliances which are ordered for those persons by a dental practitioner in pursuance of the provision of primary dental services<sup>15</sup> or equivalent services in the Scottish health service or the Northern Ireland health service<sup>16</sup>;
- 195 (4) such drugs and medicines and such listed appliances as may be determined<sup>17</sup> by the Secretary of State for these purposes and which are ordered for those persons by a prescribed<sup>18</sup> description of person in accordance with such conditions, if any, as may be prescribed, in pursuance of functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown<sup>19</sup>; and
- 196 (5) such other services as may be prescribed<sup>20</sup>.

The arrangements which may be made by a primary care trust include arrangements for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided<sup>21</sup>. Where a person with whom a primary care trust makes arrangements wishes to provide services to persons outside the area of the primary care trust he may, subject to any provision made by regulations in respect of such arrangements, provide such services under the arrangements<sup>22</sup>.

The services provided under these provisions are, together with additional pharmaceutical services provided in accordance with a direction of the Secretary of State<sup>23</sup>, known as 'pharmaceutical services'<sup>24</sup>.

1 As to primary care trusts see PARA 111.

2 The Secretary of State must make regulations for these purposes: see the National Health Service Act 2006 s 126(2). The power to make regulations includes power to make provision as to the investigation (following a complaint or otherwise) of any matter in relation to the services provided under s 126: see the Health and Medicines Act 1988 s 17. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 126: the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888 (see PARAS 419, 425); the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016 (see PARA 430 et seq); the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641 (see PARAS 345, 347, 349, 353 et seq). As to regulations see further PARA 340.

3 National Health Service Act 2006 s 126(1). As to persons with whom such arrangements may be made see PARA 342. As to the equivalent provision to the National Health Service Act 2006 s 126 in relation to Wales see the National Health Service (Wales) Act 2006 s 80. As to the meaning of 'Wales' see PARA 6 note 2.

4 'Medicine' includes such chemical re-agents as are included in a list approved by the Secretary of State for the purposes of the National Health Service Act 2006 s 126: s 275(1).

5 'Listed' means included in a list approved by the Secretary of State for the purposes of the National Health Service Act 2006 s 126: s 126(9).

6 As to the meaning of 'medical practitioner' see PARA 84 note 7.

7 As to the meaning of 'functions' see PARA 6 note 3.

8 As to the meaning of 'health service' see PARA 10 note 3.

9 'Scottish health service' means the health service within the meaning of the National Health Service (Scotland) Act 1978: National Health Service Act 2006 s 126(9).

10 'Northern Ireland health service' means the health service within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14): National Health Service Act 2006 s 126(9).

11 National Health Service Act 2006 s 126(3)(a). 'Armed forces of the Crown' does not include forces of a Commonwealth country or forces raised in a colony: s 126(9). As to the Commonwealth see **COMMONWEALTH** vol 13 (2009) PARA 701. As to the meaning of 'colony' see **COMMONWEALTH** vol 13 (2009) PARA 705. The meaning of 'colony' is subject to the Interpretation Act 1978 s 22, Sch 2 para 4(3) (see **STATUTES** vol 44(1) (Reissue) PARA 1383): National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 2 para 9.

12 As to the meaning of 'dental practitioner' see PARA 87 note 7.

13 National Health Service Act 2006 s 126(3)(b)(i).

14 National Health Service Act 2006 s 126(3)(b)(ii).

15 As to primary dental services see PARA 277.

16 National Health Service Act 2006 s 126(3)(c).

17 A determination may: (1) make different provision for different cases (National Health Service Act 2006 s 126(5)(a)); (2) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered (s 126(5)(b)); (3) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances (s 126(5)(c)).

18 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1).

19 National Health Service Act 2006 s 126(3)(d). The descriptions of persons which may be prescribed for the purposes of s 126(3)(d) are the following, or any sub-category of such a description: (1) persons who are registered in the register maintained under the Health Professions Order 2001, SI 2002/254, art 5 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 325) (National Health Service Act 2006 s 126(4)(a)); (2) persons who are registered pharmacists (s 126(4)(b)); (3) persons who are registered in the dental care professionals register established under the Dentists Act 1984 s 36B (see **MEDICAL PROFESSIONS**) (National Health Service Act 2006 s 126(4)(c)); (4) persons who are optometrists (s 126(4)(d)); (5) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 503) (National Health Service Act 2006 s 126(4)(e)); (6) persons who are registered chiropractors within the meaning of the

Chiropractors Act 1994 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 595) (National Health Service Act 2006 s 126(4)(f)); (7) persons who are registered nurses or registered midwives (s 126(4)(g)); (8) persons not mentioned in heads (1) to (7) who are registered in any register established, continued or maintained under an Order in Council under the Health Act 1999 s 60(1) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 291) (National Health Service Act 2006 s 126(4)(h)); (9) any other description of persons which appears to the Secretary of State to be a description of persons whose profession is regulated by or under a provision of, or made under, an Act of the Scottish Parliament or Northern Ireland legislation and which the Secretary of State considers it appropriate to specify (s 126(4)(i)). As to the meaning of 'person' see PARA 17 note 2. 'Registered pharmacist' means a pharmacist registered in Part 1 of the register of pharmacists maintained under the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, art 10(1) (see **MEDICAL PROFESSIONS**): National Health Service Act 2006 s 275(1) (definition substituted by SI 2007/289). As to the meaning of 'optometrist' see PARA 337 note 9. As to the registration of nurses and midwives see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 717.

- 20 National Health Service Act 2006 s 126(3)(e).
- 21 National Health Service Act 2006 s 126(6).
- 22 National Health Service Act 2006 s 126(7).
- 23 Is a direction under the National Health Service Act 2006 s 127: see PARA 346.
- 24 National Health Service Act 2006 s 126(8).

## UPDATE

### 339 Arrangements for pharmaceutical services

TEXT AND NOTES--Primary care trusts must assess and publish a statement of needs for pharmaceutical services in their area: see the National Health Service Act 2006 s 128A (added by the Health Act 2009 s 25); and PARA 339A.

NOTE 17--See *Ross*, cited, reported at [2008] EWHC 2252 (Admin), (2009) 106 BMLR 1, [2008] All ER (D) 63 (Sep) (decision to refuse funding for treatment on ground of lack of exceptionality logically flawed because it required patient to show that his case was unique).

NOTE 19--National Health Service Act 1977 s 126(4) amended: Health Act 2006 Sch 8 para 23.



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**339A. Pharmaceutical needs assessments.**

Each primary care trust must in accordance with regulations, assess needs for pharmaceutical services in its area, and publish a statement of its first assessment and of any revised assessment: National Health Service Act 2006 s 128A(1) (s 128A added by the Health Act 2009 s 25). Such regulations must make provision (1) as to information which must be contained in a statement; (2) as to the extent to which an assessment must take account of likely future needs; (3) specifying the date by which a primary care trust must publish the statement of its first assessment; (4) as to the circumstances in which a primary care trust must make a new assessment: National Health Service Act 2006 s 128A(2). The regulations may in particular make provision (a) as to the pharmaceutical services to which an assessment must relate; (b) requiring a primary care trust to consult specified persons about specified matters when making an assessment; (c) as to the manner in which an assessment is to be made; (d) as to matters to which a primary care trust must have regard when making an assessment: s 128A(4). See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Pt 1A (regs 3A-3G) (pharmaceutical needs assessments), Sch 3A (added by SI 2010/914).

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### 340. Regulations.

Regulations<sup>1</sup> must provide for securing that arrangements for pharmaceutical services<sup>2</sup> made by a primary care trust<sup>3</sup> will: (1) enable persons<sup>4</sup> for whom drugs, medicines or appliances<sup>5</sup> are ordered<sup>6</sup> to receive them from persons with whom such arrangements have been made<sup>7</sup>; and (2) ensure the provision of prescribed services<sup>8</sup> by persons with whom such arrangements have been made<sup>9</sup>. The regulations must include provision: (a) for the preparation and publication by a primary care trust of one or more lists of persons, other than medical practitioners<sup>10</sup> and dental practitioners<sup>11</sup>, who undertake to provide pharmaceutical services from premises in the area of the primary care trust<sup>12</sup>; (b) that an application to a primary care trust for inclusion in a pharmaceutical list must be made in the prescribed manner and must state the specified matters<sup>13</sup>; (c) that, except in prescribed cases<sup>14</sup>, an application for inclusion in a pharmaceutical list by a person not already included<sup>15</sup>, and an application by a person already included in a pharmaceutical list for inclusion also in respect of services or premises other than those already listed in relation to him<sup>16</sup>, may be granted only if the primary care trust is satisfied, in accordance with the regulations, that it is necessary or expedient to grant the application in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the services, or some of the services, specified in the application<sup>17</sup>; and (d) for the removal of an entry in respect of premises from a pharmaceutical list if it has been determined in the prescribed manner that the person to whom the entry relates has never provided from those premises<sup>18</sup>, or has ceased to provide from them<sup>19</sup>, the services, or any of the services, which he is listed as undertaking to provide from them<sup>20</sup>. The regulations must also include provision conferring rights of appeal<sup>21</sup> on such persons as may be prescribed<sup>22</sup>.

The regulations may include provision:

- 197 (i) that an application to a primary care trust may be granted in respect of some only of the services specified in it<sup>23</sup>;
- 198 (ii) that an application to a primary care trust relating to services of a prescribed description may be granted only if it appears to the trust that the applicant has satisfied such conditions with regard to the provision of those services as may be prescribed<sup>24</sup>;
- 199 (iii) that an application to a primary care trust by a person who qualified to have his name registered in the register of pharmacists<sup>25</sup> by virtue of a qualification in pharmacy awarded in an EEA state other than the United Kingdom<sup>26</sup>, or in Switzerland, may not be granted unless the applicant satisfies the trust that he has the knowledge of English which, in the interest of himself and persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services in the area of the trust<sup>27</sup>;
- 200 (iv) that the inclusion of a person in a pharmaceutical list in pursuance of such an application may be for a fixed period<sup>28</sup>;
- 201 (v) that, where the premises from which an application states that the applicant will undertake to provide services are in an area of a prescribed description, the applicant may not be included in the pharmaceutical list unless his inclusion is approved by reference to prescribed criteria by the primary care trust in whose area those premises are situated<sup>29</sup>;
- 202 (vi) that that primary care trust may give its approval subject to conditions<sup>30</sup>;

- 203 (vii) as to other grounds<sup>31</sup> on which a primary care trust may, or must, refuse to grant an application<sup>32</sup>;
- 204 (viii) as to information which must be supplied to a primary care trust by a person included, or seeking inclusion, in a pharmaceutical list (or by arrangement with him)<sup>33</sup>;
- 205 (ix) for the supply to a primary care trust by an individual who is included, or seeking inclusion, in a pharmaceutical list<sup>34</sup>, or who is a member of the body of persons controlling a body corporate included, or seeking inclusion, in a pharmaceutical list<sup>35</sup>, of a criminal conviction certificate<sup>36</sup>, a criminal record certificate<sup>37</sup> or an enhanced criminal record certificate<sup>38</sup>;
- 206 (x) for grounds on which a primary care trust may defer a decision whether or not to grant an application<sup>39</sup>;
- 207 (xi) for the disclosure by a primary care trust, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a pharmaceutical list, and refusals by the trust to grant such applications<sup>40</sup>;
- 208 (xii) as to criteria to be applied in making decisions under the regulations (other than decisions required by virtue of head (v) above)<sup>41</sup>;
- 209 (xiii) as to the making of declarations about financial interests<sup>42</sup>, gifts above a prescribed value<sup>43</sup>, and other benefits received<sup>44</sup>;
- 210 (xiv) if the means of providing a service is such that the person receiving it does so otherwise than at the premises from which it is provided<sup>45</sup>, requiring persons to be approved for the purposes of providing such services<sup>46</sup>, or requiring the primary care trust to make the grant of an application subject to prescribed conditions<sup>47</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. The power to make regulations under the National Health Service Act 2006 s 129 includes power to make provision as to the investigation (following a complaint or otherwise) of any matter in relation to the services provided under s 129: see the Health and Medicines Act 1988 s 17. As to the equivalent provision to the National Health Service Act 2006 ss 129, 130, 143 in relation to Wales see the National Health Service (Wales) Act 2006 ss 83, 84, 101. As to the meaning of 'Wales' see PARA 6 note 2.

By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 129: the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888 (see PARAS 419, 425); the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016 (see PARA 430 et seq); the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641 (see PARAS 345, 347, 349, 353 et seq); the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552 (see PARA 433 et seq).

2 I.e arrangements under the National Health Service Act 2006 s 126: see PARA 339. As to the meaning of 'pharmaceutical services' see PARA 339.

3 As to primary care trusts see PARA 111.

4 As to the meaning of 'person' see PARA 17 note 2.

5 I.e drugs, medicines or appliances mentioned in the National Health Service Act 2006 s 126: see PARA 339. As to the meaning of 'medicine' see PARA 339 note 4.

6 I.e as mentioned in the National Health Service Act 2006 s 126: see PARA 339.

7 National Health Service Act 2006 s 129(1)(a).

8 I.e services prescribed under the National Health Service Act 2006 s 126(3)(e): see PARA 339. 'Prescribed' means prescribed by regulations: s 275(1).

9 National Health Service Act 2006 s 129(1)(b).

10 As to the meaning of 'medical practitioner' see PARA 84 note 7.

- 11 As to the meaning of 'dental practitioner' see PARA 87 note 7.
- 12 National Health Service Act 2006 s 129(2)(a). A list published in accordance with regulations made under s 129(2)(a) is known as a 'pharmaceutical list': see s 129(11).
- 13 See the National Health Service Act 2006 s 129(2)(b). The specified matters are: (1) the services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply (s 126(2)(b)(i)); and (2) the premises from which he will undertake to provide those services (s 126(2)(b)(ii)). The regulations may prescribe the extent to which the provision of LP services (within the meaning given by Sch 12 para 1: see PARA 432 note 14) must be taken into account in determining whether to grant an application for inclusion in a pharmaceutical list: s 129(3). The power to make regulations under the National Health Service Act 2006 s 129 includes power to prescribe the extent to which the provision of piloted services must be taken into account in determining whether to grant an application for inclusion in a pharmaceutical list: s 143. As to the meaning of 'piloted services' see PARA 419 note 2.
- 14 I.e. which may, in particular, include cases of applications for the provision only of services falling within the National Health Service Act 2006 s 129(7): see the text to note 45.
- 15 National Health Service Act 2006 s 129(2)(c)(i). As to the power to charge in respect of applications under s 129(2)(c)(i) or (ii) see PARA 341.
- 16 National Health Service Act 2006 s 129(2)(c)(ii). See also note 15.
- 17 National Health Service Act 2006 s 129(2)(c). For the case where: (1) two or more applications referred to in s 129(2)(c)(i) or (ii) (see the text to notes 14-16) relate to the same neighbourhood (s 129(4)(a)); (2) they are considered together by the primary care trust (s 129(4)(b)); and (3) the primary care trust would be satisfied as mentioned in s 129(2)(c) in relation to each application taken on its own, but is not so satisfied in relation to all of them taken together (s 129(4)(c)), the regulations may include provision for the primary care trust, in determining which application (or applications) to grant, to take into account any proposals specified in the applications in relation to the sale or supply at the premises in question, otherwise than by way of pharmaceutical services or in accordance with a private prescription, of (a) drugs and medicines (s 129(4), (5)(a)); and (b) other products for, or advice in relation to, the prevention, diagnosis, monitoring or treatment of illness or handicap, or the promotion or protection of health (s 129(4), (5)(b)). As to the meaning of 'illness' see PARA 10 note 5.
- 18 National Health Service Act 2006 s 129(2)(d)(i).
- 19 National Health Service Act 2006 s 129(2)(d)(ii).
- 20 National Health Service Act 2006 s 129(2)(d).
- 21 I.e. rights of appeal from decisions made by virtue of the National Health Service Act 2006 s 129.
- 22 See the National Health Service Act 2006 s 130(1). Regulations under s 129 must be so framed as to preclude a person included in a pharmaceutical list, and an employee of such a person, from taking part in the decision whether an application such as is mentioned in s 129(2)(c) (see the text to notes 14-17) should be granted or an appeal against such a decision brought by virtue of s 130(1) should be allowed: s 130(3).
- 23 National Health Service Act 2006 s 129(6)(a).
- 24 National Health Service Act 2006 s 129(6)(b).
- 25 I.e. the register maintained under the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, art 10(1): see **MEDICAL PROFESSIONS**.
- 26 As to the meaning of 'EEA state' see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Legislative and Regulatory Reform Act 2006 s 26(1)). As to the meaning of 'United Kingdom' see PARA 15 note 8.
- 27 National Health Service Act 2006 s 129(6)(c) (amended by SI 2007/289).
- 28 National Health Service Act 2006 s 129(6)(d).
- 29 National Health Service Act 2006 s 129(6)(e).
- 30 National Health Service Act 2006 s 129(6)(f).
- 31 I.e. including grounds corresponding to the conditions referred to in the National Health Service Act 2006 s 151(2), (3) or (4) as read with s 153: see PARA 388.

- 32 National Health Service Act 2006 s 129(6)(g). If regulations made by virtue of s 129(6)(g) provide that a primary care trust may refuse to grant an application, they must also provide for an appeal (by way of redetermination) to the Family Health Services Appeal Authority against the decision of the trust: s 130(2). As to the Family Health Services Appeal Authority see **PARA 443**.
- 33 National Health Service Act 2006 s 129(6)(h).
- 34 National Health Service Act 2006 s 129(6)(i)(i).
- 35 National Health Service Act 2006 s 129(6)(i)(ii).
- 36 *Ie* under the Police Act 1997 s 112: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA 711**.
- 37 *Ie* under the Police Act 1997 s 113 (repealed). As to criminal record certificates see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA 712**.
- 38 National Health Service Act 2006 s 129(6)(i). The enhanced criminal record certificate referred to is a certificate under the Police Act 1997 s 115 (repealed): see the National Health Service Act 2006 s 129(6)(i). As to enhanced criminal record certificates see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA 713** *et seq*.
- 39 National Health Service Act 2006 s 129(6)(j).
- 40 National Health Service Act 2006 s 129(6)(k).
- 41 National Health Service Act 2006 s 129(6)(l).
- 42 National Health Service Act 2006 s 129(6)(m)(i). See also note 44.
- 43 National Health Service Act 2006 s 129(6)(m)(ii). See also note 44.
- 44 National Health Service Act 2006 s 129(6)(m)(iii). Before making regulations by virtue of s 129(6)(m), the Secretary of State must consult such organisations as he considers appropriate appearing to him to represent persons providing pharmaceutical services: s 129(10). As to the Secretary of State see **PARA 6** note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see **PARA 6**. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) **PARA 627**.
- 45 See the National Health Service Act 2006 s 129(7).
- 46 See the National Health Service Act 2006 s 129(8)(a). The approval mentioned in s 129(8)(a) is approval by the Secretary of State or such other person as may be specified in the regulations, in accordance with criteria to be specified in or determined under the regulations (whether by the Secretary of State or by another person so specified): s 129(9).
- 47 See the National Health Service Act 2006 s 129(8)(b).

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### **341. Fees for applications.**

The Secretary of State<sup>1</sup> may give directions<sup>2</sup> to a primary care trust<sup>3</sup> requiring it to charge a fee in cases or descriptions of case specified in the directions to persons<sup>4</sup> who make an application<sup>5</sup> for inclusion in a pharmaceutical list<sup>6</sup>. The Secretary of State may in the directions: (1) specify the fee himself<sup>7</sup>; or (2) require the primary care trust to determine the amount of the fee in accordance with any requirements set out in the directions<sup>8</sup>. Before determining the amount of the fee: (a) in a case falling within head (1) above, the Secretary of State must consult<sup>9</sup> such organisations as he considers appropriate that appear to him to represent persons providing pharmaceutical services<sup>10</sup> and such organisations as he considers appropriate that appear to him to represent primary care trusts<sup>11</sup>; (b) in a case falling within head (2) above, the primary care trust must undertake any consultation required by the directions<sup>12</sup>.

The Secretary of State must publish in such manner as he considers appropriate any such directions he gives<sup>13</sup>; and in a case falling within head (2) above, the primary care trust must publish in such manner as it considers appropriate the fee which it determines<sup>14</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 Such directions must be given by instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

3 As to primary care trusts see PARA 111.

4 As to the meaning of 'person' see PARA 17 note 2.

5 Is an application referred to in the National Health Service Act 2006 s 129(2)(c)(i) or (ii): see PARA 340.

6 National Health Service Act 2006 s 131(1). As to the meaning of 'pharmaceutical list' see PARA 340 note 12. As to the equivalent provision to the National Health Service Act 2006 s 131 in relation to Wales see the National Health Service (Wales) Act 2006 s 85. As to the meaning of 'Wales' see PARA 6 note 2.

7 National Health Service Act 2006 s 131(2)(a).

8 National Health Service Act 2006 s 131(2)(b).

9 As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

10 As to the meaning of 'pharmaceutical services' see PARA 339.

11 National Health Service Act 2006 s 131(3)(a).

12 National Health Service Act 2006 s 131(3)(b).

13 National Health Service Act 2006 s 131(4).

14 National Health Service Act 2006 s 131(5).

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### **342. Persons authorised to provide pharmaceutical services.**

Except as may be provided for by or under regulations<sup>1</sup>, no arrangements may be made by a primary care trust<sup>2</sup> with a medical practitioner<sup>3</sup> or dental practitioner<sup>4</sup> under which he is required or agrees to provide pharmaceutical services<sup>5</sup> to any person to whom he is rendering primary medical services<sup>6</sup> or primary dental services<sup>7</sup>. Except as may be provided for by or under regulations, no arrangements for the dispensing of medicines<sup>8</sup> may be made<sup>9</sup> with persons<sup>10</sup> other than persons who are registered pharmacists<sup>11</sup> or persons lawfully conducting<sup>12</sup> a retail pharmacy business<sup>13</sup>, and undertake that all medicines supplied by them under the arrangements will be dispensed either by or under the supervision of a registered pharmacist<sup>14</sup>.

Regulations must provide for the preparation and publication by each primary care trust of one or more lists of medical practitioners who undertake to provide drugs, medicines or listed<sup>15</sup> appliances under arrangements with the primary care trust<sup>16</sup>. The regulations may, in particular, include provision: (1) as to grounds on which a primary care trust may, or must, refuse to grant an application for inclusion in a list of medical practitioners<sup>17</sup>; (2) as to information which must be supplied to a primary care trust by a medical practitioner included, or seeking inclusion, in such a list (or by arrangement with him)<sup>18</sup>; (3) for the supply to a primary care trust by a medical practitioner who is included, or seeking inclusion, in such a list of a criminal conviction certificate<sup>19</sup>, a criminal record certificate<sup>20</sup> or an enhanced criminal record certificate<sup>21</sup>; (4) for grounds on which a primary care trust may defer a decision whether or not to grant an application for inclusion in such a list<sup>22</sup>; (5) for the disclosure by a primary care trust to prescribed<sup>23</sup> persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the trust to grant such applications<sup>24</sup>; (6) as to criteria to be applied in making decisions under the regulations<sup>25</sup>. The regulations must include provision for the removal of an entry from a list in prescribed circumstances<sup>26</sup>.

No arrangements for the provision of prescribed pharmaceutical services<sup>27</sup>, or additional pharmaceutical services provided<sup>28</sup> in accordance with a direction<sup>29</sup>, may be made with persons other than those who are registered pharmacists or are of a prescribed description<sup>30</sup>. Where arrangements for the provision of pharmaceutical services have been made with a registered pharmacist<sup>31</sup>, and his registration is suspended<sup>32</sup>, he may not provide pharmaceutical services in person during the period of suspension<sup>33</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the following regulations have effect under the National Health Service Act 2006 s 132: the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016 (see PARA 430 et seq); the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641 (see PARAS 345, 347, 349, 353 et seq).

2 As to primary care trusts see PARA 111.

3 As to the meaning of 'medical practitioner' see PARA 84 note 7.

4 As to the meaning of 'dental practitioner' see PARA 87 note 7.

5 As to the meaning of 'pharmaceutical services' see PARA 339.

6 As to primary medical services see PARA 241.

7 National Health Service Act 2006 s 132(1). As to primary dental services see PARA 277. As to the equivalent provision to the National Health Service Act 2006 s 132 in relation to Wales see the National Health Service (Wales) Act 2006 s 86. As to the meaning of 'Wales' see PARA 6 note 2.

8 As to the meaning of 'medicine' see PARA 339 note 4.

9 Ie under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133).

10 As to the meaning of 'person' see PARA 17 note 2.

11 As to the meaning of 'registered pharmacist' see PARA 339 note 19.

12 Ie in accordance with the Medicines Act 1968 s 69: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 909.

13 National Health Service Act 2006 s 132(2)(a) (s 132(2) not yet in force). The National Health Service Act 2006 s 132(2) comes into force immediately after, and to the extent that, the Health Act 2006 s 36(1) is brought into force: see the National Health Service Act 2006 s 277(3)(i), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 36(1) is repealed but such repeal does not take effect until s 36(1) is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(k), (5), (6). The Health Act 2006 s 36(1) comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

Until the coming into force of the Health Act 2006 s 36(1), the National Health Service Act 2006 s 132 has effect as if for s 132(2) there were substituted: 'No arrangements for the dispensing of medicines may be made (except as may be provided by or under regulations) with persons other than persons who are registered pharmacists, or are persons lawfully conducting a retail pharmacy business in accordance with the Medicines Act 1968 s 69 and who undertake that all medicines supplied by them under the arrangements made under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133) will be dispensed either by or under the direct supervision of a registered pharmacist': National Health Service (Consequential Provisions) Act 2006 Sch 3 Pt 2 para 7.

14 National Health Service Act 2006 s 132(2)(b) (not yet in force: see note 13).

15 Ie within the meaning given by the National Health Service Act 2006 s 126: see PARA 339 note 5.

16 National Health Service Act 2006 s 132(3). As to the regulations made see note 1.

17 National Health Service Act 2006 s 132(4)(a). The grounds may include grounds corresponding to the conditions referred to in s 151(2), (3) or (4) as read with s 153(2) (see PARA 388): s 132(4)(a). If regulations made by virtue of s 132(4)(a) provide that a primary care trust may refuse to grant an application for inclusion in such a list, they must also provide for an appeal (by way of redetermination) to the Family Health Services Appeal Authority against the decision of the trust: s 132(5). As to the Family Health Services Appeal Authority see PARA 443.

18 National Health Service Act 2006 s 132(4)(b).

19 Ie under the Police Act 1997 s 112: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 711.

20 Ie under the Police Act 1997 s 113 (repealed). As to criminal record certificates see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 712.

21 National Health Service Act 2006 s 132(4)(c). The enhanced criminal record certificate referred to is a certificate under the Police Act 1997 s 115 (repealed): see the National Health Service Act 2006 s 132(4)(c). As to enhanced criminal record certificates see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 713 et seq.

22 National Health Service Act 2006 s 132(4)(d).

23 'Prescribed' means prescribed by regulations: see the National Health Service Act 2006 s 275(1).

24 National Health Service Act 2006 s 132(4)(e).

25 National Health Service Act 2006 s 132(4)(f).



26 National Health Service Act 2006 s 132(6).

27 National Health Service Act 2006 s 132(7)(a). Prescribed pharmaceutical services are those falling within s 126(3)(e) (see PARA 339): s 132(7)(a).

28 le under the National Health Service Act 2006 s 127: see PARA 346.

29 National Health Service Act 2006 s 132(7)(b).

30 National Health Service Act 2006 s 132(7).

31 National Health Service Act 2006 s 132(8)(a).

32 National Health Service Act 2006 s 132(8)(b) (substituted by SI 2007/289). The reference to his registration being suspended is to suspension by virtue of any direction or order under the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289 (see **MEDICAL PROFESSIONS**): National Health Service Act 2006 s 132(8)(b) (as so substituted).

33 National Health Service Act 2006 s 132(8).

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### **343. Conditional inclusion in pharmaceutical lists.**

Regulations<sup>1</sup> may provide: (1) that if a person<sup>2</sup> is included in a pharmaceutical list<sup>3</sup> he is subject, while he remains included in the list, to conditions<sup>4</sup> determined by the primary care trust<sup>5</sup> in whose list he is included<sup>6</sup>; (2) for the primary care trust to vary that person's terms of service<sup>7</sup> for the purpose of or in connection with the imposition of any such conditions<sup>8</sup>; (3) for the primary care trust to vary the conditions or impose different ones<sup>9</sup>; (4) for the consequences of failing to comply with a condition (including removal from the list)<sup>10</sup>; and (5) for the review by the primary care trust of any decision made by virtue of the regulations<sup>11</sup>. If regulations provide as mentioned in heads (1) to (5) above, they must also provide for an appeal by the person in question to the Family Health Services Appeal Authority<sup>12</sup> against the decision of the primary care trust: (a) to impose conditions, or any particular condition<sup>13</sup>; (b) to vary a condition<sup>14</sup>; (c) to vary his terms of service<sup>15</sup>; (d) on any review of an earlier such decision of the primary care trust<sup>16</sup>; (e) to remove him from the list for breach of condition<sup>17</sup>. The appeal must be by way of redetermination of the decision of the primary care trust<sup>18</sup>.

The regulations may provide for the disclosure by a primary care trust, to prescribed<sup>19</sup> persons or persons of prescribed descriptions, of information of a prescribed description about persons whose inclusion in a pharmaceutical list is subject to conditions<sup>20</sup>, and about the removal of such persons from a pharmaceutical list for breach of condition<sup>21</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641 (see PARAS 345, 347, 349, 353 et seq) have effect under the National Health Service Act 2006 s 148.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to the meaning of 'pharmaceutical list' see PARA 340 note 12.

4 The imposition of conditions must be with a view to: (1) preventing any prejudice to the efficiency of the services in question (National Health Service Act 2006 s 148(2)(a)); or (2) preventing any acts or omissions within s 151(3)(a) (see PARA 388) (s 148(2)(b)).

5 As to primary care trusts see PARA 111.

6 National Health Service Act 2006 s 148(1)(a). As to the equivalent provision to the National Health Service Act 2006 s 148 in relation to Wales see the National Health Service (Wales) Act 2006 s 104. As to the meaning of 'Wales' see PARA 6 note 2.

7 'Terms of service' means the terms upon which, by virtue of regulations, a person undertakes to provide pharmaceutical services: National Health Service Act 2006 s 148(7). As to the meaning of 'pharmaceutical services' see PARA 339.

8 National Health Service Act 2006 s 148(1)(b).

9 National Health Service Act 2006 s 148(1)(c). See also note 4.

10 National Health Service Act 2006 s 148(1)(d). If regulations provide for a practitioner's removal from the list for breach of condition: (1) the regulations may provide that he may not withdraw from the list while the primary care trust is investigating whether there are grounds for exercising its power to remove him, or after the trust has decided to remove him but before it has given effect to that decision (s 148(3)(a)); and (2) the regulations must include provision (a) requiring the practitioner to be given notice of any allegation against him

(s 148(3)(b)(i)); (b) giving him the opportunity of putting his case at a hearing before the trust makes any decision as to his removal from the list (s 148(3)(b)(ii)); and (c) requiring him to be given notice of the decision of the trust and the reasons for it and of his right of appeal under s 148(4) (see the text to notes 12-18) (s 148(3)(b)(iii)).

11 National Health Service Act 2006 s 148(1)(e).

12 As to the Family Health Services Appeal Authority see PARA 443.

13 National Health Service Act 2006 s 148(4)(a).

14 National Health Service Act 2006 s 148(4)(b).

15 National Health Service Act 2006 s 148(4)(c).

16 National Health Service Act 2006 s 148(4)(d).

17 National Health Service Act 2006 s 148(4)(e).

18 National Health Service Act 2006 s 148(4). The regulations may provide for any such decision not to have effect until the determination by the Family Health Services Appeal Authority of any appeal against it, and must so provide in relation to a decision referred to in s 148(4)(e) (see the text to note 17): s 148(5).

19 'Prescribed' means prescribed by regulations: see the National Health Service Act 2006 s 275(1).

20 National Health Service Act 2006 s 148(6)(a). The conditions referred to are conditions imposed under s 148: see s 148(6)(a).

21 National Health Service Act 2006 s 148(6)(b).

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### **344. Supplementary lists.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> providing for the preparation and publication by each primary care trust<sup>3</sup> of one or more lists of persons<sup>4</sup> approved by the trust for the purpose of assisting in the provision of pharmaceutical services<sup>5</sup>. Such a list is known as a 'supplementary list'<sup>6</sup>. The regulations may, in particular, include provision as to:

- 211 (1) the primary care trust to which an application for inclusion in a supplementary list must be made<sup>7</sup>;
- 212 (2) the procedure for applying for inclusion, including any information to be supplied to the primary care trust (whether by the applicant or by arrangement with him)<sup>8</sup>;
- 213 (3) grounds on which the primary care trust may, or must, refuse a person's application for inclusion in a supplementary list (including his unsuitability for inclusion in such a list), or on which it may defer its decision on the application<sup>9</sup>;
- 214 (4) requirements with which a person included in a supplementary list must comply (including the declaration of financial interests and of gifts and other benefits)<sup>10</sup>;
- 215 (5) grounds on which a primary care trust may, or must, suspend or remove a person from a supplementary list, the procedure for doing so, and the consequences of doing so<sup>11</sup>;
- 216 (6) payments to or in respect of persons who are suspended from a supplementary list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State)<sup>12</sup>;
- 217 (7) the supply to the primary care trust by an applicant for inclusion in a supplementary list, or by a person included in one, of a criminal conviction certificate<sup>13</sup>, a criminal record certificate<sup>14</sup> or an enhanced criminal record certificate<sup>15</sup>;
- 218 (8) circumstances in which a person included in a supplementary list may not withdraw from it<sup>16</sup>;
- 219 (9) criteria to be applied in making decisions under the regulations<sup>17</sup>;
- 220 (10) appeals against decisions of primary care trusts under the regulations<sup>18</sup>;
- 221 (11) the disclosure by a primary care trust, to prescribed<sup>19</sup> persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a supplementary list, refusals of such applications, and suspensions and removals from that list<sup>20</sup>.

The regulations may, in particular, also provide for: (a) a person's inclusion in a supplementary list to be subject to conditions determined by the primary care trust<sup>21</sup>; (b) the primary care trust to vary the conditions or impose different ones<sup>22</sup>; (c) the consequences of failing to comply with a condition (including removal from the list)<sup>23</sup>; and (d) the review by the primary care trust of its decisions<sup>24</sup>. If the regulations make such provision<sup>25</sup>, they must provide for an appeal (by way of redetermination) by the person in question to the Family Health Services Appeal Authority against the decision<sup>26</sup> of the primary care trust<sup>27</sup>.

If the regulations provide<sup>28</sup> that a primary care trust may suspend or remove a person from a supplementary list, they must include provision: (i) requiring him to be given notice of any

allegation against him<sup>29</sup>; (ii) giving him the opportunity of putting his case at a hearing before the primary care trust makes any decision as to his suspension or removal<sup>30</sup>; and (iii) requiring him to be given notice of the decision of the primary care trust and the reasons for it and of any right<sup>31</sup> of appeal<sup>32</sup>.

Regulations under the above provisions<sup>33</sup> may require a person included in a pharmaceutical list<sup>34</sup>, or a list<sup>35</sup> of medical practitioners who undertake to provide drugs, medicines or listed appliances<sup>36</sup>, not to employ or engage a person to assist him in the provision of the service to which the list relates unless the latter person is included in a specified list<sup>37</sup>. If regulations do so require, they need not require both persons to be included in lists prepared by the same primary care trust<sup>38</sup>, but may, in particular, require that both persons be included in lists prepared by primary care trusts<sup>39</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

3 As to primary care trusts see PARA 111.

4 As to the meaning of 'person' see PARA 17 note 2.

5 National Health Service Act 2006 s 149(1). As to the meaning of 'pharmaceutical services' see PARA 339. As to the equivalent provision to the National Health Service Act 2006 ss 149, 150 in relation to Wales see the National Health Service (Wales) Act 2006 ss 105, 106. As to the meaning of 'Wales' see PARA 6 note 2.

6 National Health Service Act 2006 s 149(2).

7 National Health Service Act 2006 s 149(3)(a).

8 National Health Service Act 2006 s 149(3)(b).

9 National Health Service Act 2006 s 149(3)(c). If the regulations provide under s 149(3)(c) or (e) (see the text to note 11) that a primary care trust may refuse a person's application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the Family Health Services Appeal Authority against the decision of the trust: s 149(8). As to the Family Health Services Appeal Authority see PARA 443.

10 National Health Service Act 2006 s 149(3)(d).

11 National Health Service Act 2006 s 149(3)(e). Regulations made by virtue of s 149(3)(e) may (but need not) make provision corresponding to anything in ss 151-159 (see PARAS 388, 390, 394, 395, 397, 401, 402): s 149(6). See also note 9.

12 National Health Service Act 2006 s 149(3)(f).

13 Ie under the Police Act 1997 s 112: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 711.

14 Ie under the Police Act 1997 s 113 (repealed). As to criminal record certificates see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 712.

15 National Health Service Act 2006 s 149(3)(g). The enhanced criminal record certificate referred to is a certificate under the Police Act 1997 s 115 (repealed): see the National Health Service Act 2006 s 149(3)(g). As to enhanced criminal record certificates see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 713 et seq.

16 National Health Service Act 2006 s 149(3)(h).

17 National Health Service Act 2006 s 149(3)(i).

18 National Health Service Act 2006 s 149(3)(j).

19 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

20 National Health Service Act 2006 s 149(3)(k).

21 National Health Service Act 2006 s 149(4)(a). The imposition of conditions must be with a view to: (1) preventing any prejudice to the efficiency of the services to which the supplementary list relates (s 149(5)(a)); or (2) preventing any acts or omissions of the type described in s 151(3)(a) (see PARA 388) (s 149(5)(b)).

22 National Health Service Act 2006 s 149(4)(b). See also note 21.

23 National Health Service Act 2006 s 149(4)(c).

24 National Health Service Act 2006 s 149(4)(d). The decisions referred to are those made by virtue of regulations under s 149(4): s 149(4)(d).

25 Ie provision under the National Health Service Act 2006 s 149(4): see the text to notes 21-24.

26 Ie the decision: (1) to impose conditions, or any particular condition (National Health Service Act 2006 s 149(9)(a)); (2) to vary a condition (s 149(9)(b)); (3) to remove him from the supplementary list for breach of condition (s 149(9)(c)); (4) on any review of an earlier such decision of the primary care trust (s 149(9)(d)).

27 National Health Service Act 2006 s 149(9).

28 Ie under the National Health Service Act 2006 s 149(3)(e) (see the text to note 11) or 149(4) (see the text to notes 21-24).

29 National Health Service Act 2006 s 149(7)(a).

30 National Health Service Act 2006 s 149(7)(b).

31 Ie under the National Health Service Act 2006 s 149(8) (see note 9) or s 149(9) (see the text to notes 25-27).

32 National Health Service Act 2006 s 149(7).

33 Ie regulations under the National Health Service Act 2006 s 149.

34 National Health Service Act 2006 s 150(1)(a). As to the meaning of 'pharmaceutical list' see PARA 340 note 12.

35 Ie under the National Health Service Act 2006 s 132(3): see PARA 342.

36 National Health Service Act 2006 s 150(1)(b).

37 National Health Service Act 2006 s 150(1). The specified lists are: (1) a list referred to in s 150(1) (s 150(2)(a)); (2) a supplementary list (s 150(2)(b)); (3) a list under s 91 (see PARA 248), s 106 (see PARA 283) or s 123 (see PARA 335) (s 150(2)(c)); (4) a list under s 146 (see PARA 417) or a list corresponding to a list under s 91 prepared by a primary care trust by virtue of regulations made under s 145 (see PARA 416) (s 150(2)(d)); (5) a list corresponding to a list mentioned in any of heads (1)-(4) prepared by a local health board under or by virtue of the National Health Service (Wales) Act 2006 (National Health Service Act 2006 s 150(2)(e)); or, in any of the cases in heads (1)-(5), such a list of a prescribed description (s 150(2)). As to the meaning of 'local health board' see PARA 17 note 13.

38 National Health Service Act 2006 s 150(3)(a).

39 National Health Service Act 2006 s 150(3)(b).

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### **345. Publication of lists and other documents.**

A primary care trust<sup>1</sup> must make available for inspection at its offices copies of: (1) its pharmaceutical lists<sup>2</sup>; (2) the terms of service for pharmacists<sup>3</sup>; (3) the terms of service for doctors<sup>4</sup> who provide pharmaceutical services<sup>5</sup>; (4) the terms of service for suppliers of appliances<sup>6</sup>; (5) the drug tariff<sup>7</sup>; (6) determinations made by the primary care trust as to particular fees, allowances or other remuneration<sup>8</sup>; (7) its dispensing doctor list<sup>9</sup>; and (8) its ETP list<sup>10</sup>. The primary care trust must keep such documents up to date<sup>11</sup>.

The primary care trust may make such documents available for inspection at such other places in its locality as appear to it convenient for informing all persons interested<sup>12</sup>, or publish at such places a notice of the places and times at which copies of such documents may be seen<sup>13</sup>. The primary care trust must send a copy of its pharmaceutical list and of its dispensing doctor list to the local medical committee<sup>14</sup>, the local dental committee<sup>15</sup> and the local pharmaceutical committee<sup>16</sup>; and must, within 14 days of any alteration in either of those lists, so inform them in writing<sup>17</sup>.

1 As to primary care trusts see PARA 111.

2 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(1)(a). As to pharmaceutical lists see PARA 353. The National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, apply in relation to England only; reg 1(2). As to the equivalent regulations in relation to Wales see the National Health Service (Pharmaceutical Services) Regulations 1992, SI 1992/662. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(1)(b). As to such terms of service see PARA 347. 'Pharmacist' means, except where the context otherwise requires (1) a registered pharmacist; or (2) a person lawfully conducting a retail pharmacy business in accordance with the Medicines Act 1968 s 69 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 909), whose name is included in the list of a primary care trust under the National Health Service Act 2006 s 129 (see PARA 340), but does not include a supplier of appliances only: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). 'Appliance' means an appliance which is included in a list for the time being approved by the Secretary of State for the purposes of the National Health Service Act 2006 s 126 (see PARA 339): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to the meaning of 'registered pharmacist' see PARA 339 note 19. As to the Secretary of State see PARA 6 note 8.

4 'Doctor' means a medical practitioner: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1). As to the meaning of 'medical practitioner' see PARA 84 note 7.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(1)(c). As to such terms of service see PARA 347. 'Pharmaceutical services' means pharmaceutical services other than directed services: reg 2(1). The term 'pharmaceutical services', in relation to a doctor, means those services referred to in reg 60 (see PARA 404): reg 2(2). 'Directed services' means additional pharmaceutical services provided in accordance with a direction under the National Health Service Act 2006 s 127 (see PARA 346): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(1)(d). As to such terms of service see PARA 347.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(1)(e). As to the meaning of 'drug tariff' see PARA 411 note 9.

- 8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(1)(f).
- 9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(1)(g). As to the meaning of 'dispensing doctor list' see PARA 410.
- 10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(1)(h). As to ETP lists see PARA 386.
- 11 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(1).
- 12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(2)(a). As to the meaning of 'person' see PARA 17 note 2.
- 13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(2)(b).
- 14 As to local medical committees see PARA 272.
- 15 As to local dental committees see PARA 294.
- 16 As to local pharmaceutical committees see PARA 351.
- 17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 70(3). As to the meaning of 'writing' see PARA 7 note 2.

## **UPDATE**

### **345 Publication of lists and other documents**

NOTE 2--SI 1992/662 further amended: SI 2009/1491.



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### **346. Arrangements for additional pharmaceutical services.**

The Secretary of State<sup>1</sup> may: (1) give directions<sup>2</sup> to a primary care trust<sup>3</sup> requiring it to arrange for the provision to persons within or outside its area of additional pharmaceutical services<sup>4</sup>; or (2) by giving directions to a primary care trust authorise it to arrange for such provision if it wishes to do so<sup>5</sup>. The Secretary of State must publish any such directions in the drug tariff<sup>6</sup> or in such other manner as he considers appropriate<sup>7</sup>. After making any arrangements, a primary care trust must publish, in such manner as the Secretary of State may direct, such details of the arrangements as he may direct<sup>8</sup>.

Directions under these provisions may require or authorise a primary care trust to arrange for the provision of a service by means such that the person receiving it does so otherwise than at the premises from which it is provided (whether those premises are inside or outside the area of the primary care trust)<sup>9</sup>. Such directions may also require the primary care trust to which they apply, when making arrangements: (a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions<sup>10</sup>; (b) to impose, on any person<sup>11</sup> providing a service in accordance with the arrangements, such conditions as may be so specified<sup>12</sup>. The arrangements must secure that any service to which they apply is provided only by a person whose name is included in a pharmaceutical list<sup>13</sup>, or who has entered<sup>14</sup> into a pharmaceutical care services contract<sup>15</sup>. Different arrangements may be made with respect to the provision of the same service by the same person but in different circumstances<sup>16</sup>, or the provision of the same service by different persons<sup>17</sup>. A primary care trust must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them<sup>18</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 Directions given under the National Health Service Act 2006 ss 127, 128 must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

3 As to primary care trusts see PARA 111.

4 National Health Service Act 2006 s 127(1)(a). 'Additional pharmaceutical services', in relation to directions, means the services (of a kind that do not fall within s 126 (see PARA 339)) which are specified in the directions: s 127(4). As to the meaning of 'pharmaceutical services' see PARA 339. As to the equivalent provision to the National Health Service Act 2006 ss 127, 128 in relation to Wales see the National Health Service (Wales) Act 2006 ss 81, 82. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 s 127(1)(b).

6 'Drug tariff' means the drug tariff published under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 56 (see PARA 411 note 9): National Health Service Act 2006 s 127(4).

7 National Health Service Act 2006 s 127(3).

8 National Health Service Act 2006 s 128(5).

9 National Health Service Act 2006 s 127(2).

10 National Health Service Act 2006 s 128(1)(a).

- 11 As to the meaning of 'person' see PARA 17 note 2.
- 12 National Health Service Act 2006 s 128(1)(b).
- 13 National Health Service Act 2006 s 128(2)(a). 'Pharmaceutical list' includes, subject to any provision of the directions in question, a list published in accordance with regulations made under the National Health Service (Wales) Act 2006 s 83(2)(a), or the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14), art 63(2A)(a): National Health Service Act 2006 s 128(6). As to the meaning of 'pharmaceutical list' generally see PARA 340 note 12.
- 14 le under the National Health Service (Scotland) Act 1978 s 17Q.
- 15 National Health Service Act 2006 s 128(2)(b).
- 16 National Health Service Act 2006 s 128(3)(a).
- 17 National Health Service Act 2006 s 128(3)(b).
- 18 National Health Service Act 2006 s 128(4).

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### **347. Terms of service.**

The arrangements for the provision of pharmaceutical services<sup>1</sup> which it is the duty of a primary care trust<sup>2</sup> to make<sup>3</sup>, and to administer<sup>4</sup> under the National Health Service Act 2006, must incorporate the prescribed terms of service<sup>5</sup>.

1 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

2 As to primary care trusts see PARA 111.

3 Ie under the National Health Service Act 2006 ss 126-132: see PARAS 339-342, 346.

4 Ie under the National Health Service Act 2006 s 22: see PARA 126.

5 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 3; National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the prescribed terms of service in the case of arrangements with a pharmacist see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 3(a), Sch 1 (amended by SI 2005/1501; SI 2006/552; SI 2006/1056; SI 2006/3373; SI 2008/683); as to those in the case of arrangements with a doctor who provides pharmaceutical services see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 3(b), Sch 2 (amended by SI 2005/1501; SI 2006/3373); and as to those in the case of arrangements with a supplier of appliances see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 3(c), Sch 3 (amended by SI 2005/1501; SI 2006/552; SI 2006/3373). As to the meaning of 'pharmacist' see PARA 345 note 3. As to the meaning of 'doctor' see PARA 345 note 4. As to the meaning of 'appliance' see PARA 345 note 3. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

### **UPDATE**

### **347 Terms of service**

NOTE 5--SI 2005/641 Schs 1-3 further amended: SI 2008/1514, SI 2009/309, SI 2009/2205. SI 2005/641 Schs 1, 3 amended: SI 2010/914.

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### **348. Inadequate provision of pharmaceutical services.**

If the Secretary of State<sup>1</sup> is satisfied, after such inquiry as he considers appropriate, that:

- 222 (1) as respects the area, or part of the area, of a primary care trust<sup>2</sup>, the persons<sup>3</sup> whose names are included in any pharmaceutical list<sup>4</sup> are not such as to secure the adequate provision of pharmaceutical services<sup>5</sup> in that area or part<sup>6</sup>; or
- 223 (2) for any other reason any considerable number of persons in any such area or part are not receiving satisfactory services under the arrangements in force<sup>7</sup> for the provision of pharmaceutical services<sup>8</sup>,

he may: (a) authorise the primary care trust to make such other arrangements as he may approve, or may himself make such other arrangements<sup>9</sup>; and (b) dispense with any of the requirements of regulations<sup>10</sup> so far as appears to him necessary to meet exceptional circumstances and enable such arrangements to be made<sup>11</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to primary care trusts see PARA 111.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'pharmaceutical list' see PARA 340 note 12.

5 As to the meaning of 'pharmaceutical services' see PARA 339.

6 National Health Service Act 2006 s 133(1)(a). As to the equivalent provision to the National Health Service Act 2006 s 133 in relation to Wales see the National Health Service (Wales) Act 2006 s 87. As to the meaning of 'Wales' see PARA 6 note 2.

7 Ie under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133).

8 National Health Service Act 2006 s 133(1)(b).

9 National Health Service Act 2006 s 133(2)(a).

10 Ie regulations made under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133), Ch 5 (ss 148-150), Ch 6 (ss 151-163) and Ch 7 (ss 164-168). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

11 National Health Service Act 2006 s 133(2)(b).

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### **349. Exercise of choice of chemist.**

An application to a chemist<sup>1</sup> for pharmaceutical services<sup>2</sup> may be made (other than by the chemist concerned): (1) on behalf of any child<sup>3</sup> by either parent, or in the absence of both parents, the guardian or other person who has the care of the child<sup>4</sup>; (2) on behalf of any person under 18 years of age who is (a) in the care of an authority to whose care he has been committed under the provisions of the Children Act 1989, by a person duly authorised by that authority<sup>5</sup>; or (b) in the care of a voluntary organisation, by that organisation or a person duly authorised by it<sup>6</sup>; (3) on behalf of any adult who is incapable of making such an application or authorising such an application to be made on their behalf, by a relative or the primary carer of that person<sup>7</sup>; or (4) on behalf of any other person by any duly authorised person<sup>8</sup>.

1 'Chemist' means: (1) a registered pharmacist; (2) a person lawfully conducting a retail pharmacy business in accordance with the Medicines Act 1968 s 69 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 909); or (3) a supplier of appliances, who is included in the list of a primary care trust under the National Health Service Act 2006 s 129 (see PARA 340), and includes a person suspended from such a list: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2. As to the meaning of 'registered pharmacist' see PARA 339 note 19. As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'appliance' see PARA 345 note 3. As to primary care trusts see PARA 111.

2 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

3 'Child' means a person who has not attained the age of 16 years: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1). As to the time at which a person attains a particular age see PARA 36 note 7.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 72(a).

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 72(b)(i). As to the Children Act 1989 see **CHILDREN AND YOUNG PERSONS**.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 72(b)(ii).

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 72(c). 'Primary carer' means, in relation to an adult, the adult or organisation primarily caring for him: reg 2(1).

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 72(d).

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### 350. Indemnity cover.

Regulations<sup>1</sup> may make provision for the purpose of securing that, in prescribed<sup>2</sup> circumstances, prescribed persons<sup>3</sup> included in a pharmaceutical list<sup>4</sup> hold approved indemnity cover<sup>5</sup>. The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision: (1) for securing that a person must not be added to a pharmaceutical list unless he holds approved indemnity cover<sup>6</sup>; (2) for the removal from a pharmaceutical list prepared by a primary care trust of a person who does not within a prescribed period after the making of a request by the trust in the prescribed manner satisfy the trust that he holds approved indemnity cover<sup>7</sup>. The regulations may also provide that a person of any description who has entered into a contract or arrangement which is in a form identified in accordance with the regulations in relation to persons of that description<sup>8</sup>, and made with a person or persons so identified<sup>9</sup>, must be treated as holding approved indemnity cover for the purposes of the regulations<sup>10</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made. As to the equivalent provision to the National Health Service Act 2006 s 166 in relation to Wales see the National Health Service (Wales) Act 2006 s 120. As to the meaning of 'Wales' see PARA 6 note 2.

2 'Prescribed' means prescribed by regulations: see the National Health Service Act 2006 s 275(1).

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'pharmaceutical list' see PARA 340 note 12.

5 National Health Service Act 2006 s 166(1). 'Approved indemnity cover' means indemnity cover made on prescribed terms and with an approved body; and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover: s 166(3). 'Approved body' means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed: s 166(3). 'Indemnity cover', in relation to a person included in a pharmaceutical list (or a person who proposes to provide pharmaceutical services), means a contract of insurance or other arrangement made for the purpose of indemnifying him, and any person prescribed in relation to him, to any prescribed extent against any liability which arises out of the provision of pharmaceutical services in accordance with arrangements made by him with a primary care trust, and is incurred by him or any such person in respect of the death or personal injury of a person: s 166(3). 'Personal injury' means any disease or impairment of a person's physical or mental condition and includes the prolongation of any disease or such impairment: s 166(3). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the meaning of 'pharmaceutical services' see PARA 339. As to primary care trusts see PARA 111. As to professional indemnity insurance see **INSURANCE** vol 25 (2003 Reissue) PARA 692 et seq.

6 National Health Service Act 2006 s 166(2)(a).

7 National Health Service Act 2006 s 166(2)(b).

8 National Health Service Act 2006 s 166(4)(a).

9 National Health Service Act 2006 s 166(4)(b).

10 National Health Service Act 2006 s 166(4).

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### **351. Local pharmaceutical committees.**

A primary care trust<sup>1</sup> may recognise a local pharmaceutical committee<sup>2</sup> formed for its area, or for its area and that of one or more other primary care trusts, which it is satisfied is representative of: (1) the persons<sup>3</sup> (known as 'pharmaceutical services providers') providing pharmaceutical services<sup>4</sup> from premises in the area for which the committee is formed<sup>5</sup>; (2) pharmaceutical services providers and the persons specified in heads (a) and (b) below<sup>6</sup>; (3) pharmaceutical services providers and the persons specified in head (a) below<sup>7</sup>; or (4) pharmaceutical services providers and the persons specified in head (b) below<sup>8</sup>.

The persons specified for these purposes are: (a) each person who is providing local pharmaceutical services<sup>9</sup> in the primary care trust's area under an LPS scheme<sup>10</sup> made (whether with himself or another person) by the primary care trust<sup>11</sup>, and has notified the primary care trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented)<sup>12</sup>; and (b) each person who is providing local pharmaceutical services in the primary care trust's area under a pilot scheme<sup>13</sup> made (whether with himself or another person) by the primary care trust<sup>14</sup>, and has notified the primary care trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented)<sup>15</sup>.

Regulations<sup>16</sup> may require a primary care trust, in the exercise of functions<sup>17</sup> relating to pharmaceutical services or local pharmaceutical services, to consult local pharmaceutical committees recognised by it on such occasions and to such extent as may be prescribed<sup>18</sup>. A recognised local pharmaceutical committee has such other functions as may be prescribed<sup>19</sup>. Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee<sup>20</sup>.

A primary care trust may, on the request of any local pharmaceutical committee recognised by it, allot to that committee such sums for defraying the committee's administrative expenses<sup>21</sup> as may be determined by the trust<sup>22</sup>. Any sums so allotted must be out of the moneys available to the primary care trust for the remuneration of persons of whom the committee is representative under head (1) above<sup>23</sup>; and the amount of any such sums must be deducted from the remuneration of those persons in such manner as may be determined by trust<sup>24</sup>. A committee recognised under heads (2), (3) or (4) above must, in respect of each year, determine the amount of its administrative expenses for that year attributable to the persons of whom<sup>25</sup> it is representative<sup>26</sup>. The committee must apportion the amount so determined among the persons of whom it is representative, and each such person must pay in accordance with the committee's directions the amount so apportioned to him<sup>27</sup>.

1 As to primary care trusts see PARA 111.

2 A committee recognised under the National Health Service Act 2006 s 167 is called the local pharmaceutical committee for the area for which it is formed: s 167(4). As to the equivalent provision to the National Health Service Act 2006 s 167 in relation to Wales see the National Health Service (Wales) Act 2006 s 90. As to the meaning of 'Wales' see PARA 6 note 2.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'pharmaceutical services' see PARA 339.

- 5 National Health Service Act 2006 s 167(1)(a).
- 6 See the National Health Service Act 2006 s 167(1)(b).
- 7 See the National Health Service Act 2006 s 167(1)(c).
- 8 See the National Health Service Act 2006 s 167(1)(d).
- 9 As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.
- 10 As to the meaning of 'LPS scheme' see PARA 431.
- 11 National Health Service Act 2006 s 167(2)(a).
- 12 National Health Service Act 2006 s 167(2)(b).
- 13 As to the meaning of 'pilot scheme' see PARA 419.
- 14 National Health Service Act 2006 s 167(3)(a).
- 15 National Health Service Act 2006 s 167(3)(b).
- 16 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.
- 17 As to the meaning of 'functions' see PARA 6 note 3.
- 18 National Health Service Act 2006 s 167(6). 'Prescribed' means prescribed by regulations: s 275(1). This provision does not affect any other power to require a primary care trust to consult local pharmaceutical committees recognised by it: s 167(7).
- 19 National Health Service Act 2006 s 167(8).
- 20 National Health Service Act 2006 s 167(5).
- 21 Ie other than any such expenses determined under the National Health Service Act 2006 s 167(12): see the text to notes 25-26. The administrative expenses of a committee include the travelling and subsistence allowances payable to its members: s 167(14).
- 22 National Health Service Act 2006 s 167(9).
- 23 National Health Service Act 2006 s 167(10).
- 24 National Health Service Act 2006 s 167(11).
- 25 Ie under head (a) or (b) in the text.
- 26 National Health Service Act 2006 s 167(12).
- 27 National Health Service Act 2006 s 167(13).



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### **352. Provision of accommodation.**

If the Secretary of State<sup>1</sup> considers that any accommodation provided by him by virtue of the National Health Service Act 2006 is suitable for use in connection with the provision of pharmaceutical services<sup>2</sup> or local pharmaceutical services<sup>3</sup>, he may make the accommodation available on such terms as he considers appropriate to persons<sup>4</sup> providing those services<sup>5</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89.

2 As to the meaning of 'pharmaceutical services' see PARA 339.

3 As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

4 As to the meaning of 'person' see PARA 17 note 2.

5 National Health Service Act 2006 s 168. As to the equivalent provision to the National Health Service Act 2006 s 168 in relation to Wales see the National Health Service (Wales) Act 2006 s 91. As to the meaning of 'Wales' see PARA 6 note 2.

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## (B) PHARMACEUTICAL LISTS

### *(a) Preparation of Lists*

#### **353. Preparation of lists.**

A primary care trust<sup>1</sup> must prepare and publish lists, to be called 'pharmaceutical lists', of the persons<sup>2</sup>, other than doctors<sup>3</sup> and dentists<sup>4</sup>:

- 224 (1) whose applications to be included in a pharmaceutical list have been granted by the primary care trust<sup>5</sup>, and who accordingly undertake to provide pharmaceutical services<sup>6</sup> from premises in the trust's area, in particular, by way of the provision of drugs<sup>7</sup>; and
- 225 (2) whose applications to be included in a pharmaceutical list have been granted by the primary care trust<sup>8</sup>, and who accordingly undertake to provide pharmaceutical services from premises in the trust's area by way of the provision of appliances<sup>9</sup>.

Each such list must contain: (a) the addresses of premises in the primary care trust's area from which those services are provided<sup>10</sup>; (b) the days on which and times at which pharmaceutical services are provided at that address (including times at which those services are provided when the person is not obliged to do so)<sup>11</sup>; and (c) in the case of a list referred to in head (1) above, must indicate whether or not the chemist<sup>12</sup> has undertaken to provide directed services<sup>13</sup>, and if he has, which services<sup>14</sup>. The pharmaceutical lists must be available for public inspection<sup>15</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to the meaning of 'doctor' see PARA 345 note 4.

4 'Dentist' means a dental practitioner: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1). As to the meaning of 'dental practitioner' see PARA 87 note 7.

5 Ie subject to and in accordance with the provisions of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641.

6 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 4(1)(a). 'Drugs' includes medicines: reg 2(1). As to the meaning of 'medicine' see PARA 339 note 4. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

8 Ie subject to and in accordance with the provisions of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 4(1)(b). As to the meaning of 'appliance' see PARA 345 note 3.

- 10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 4(2)(a).
- 11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 4(2)(b).
- 12 As to the meaning of 'chemist' see PARA 349 note 1.
- 13 As to the meaning of 'directed services' see PARA 345 note 5.
- 14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 4(2)(c).
- 15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 4(3).

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### **354. Applications for inclusion in or amendment to a pharmaceutical list.**

A person<sup>1</sup>, other than a doctor<sup>2</sup> or dentist<sup>3</sup>:

- 226 (1) who wishes to be included in a pharmaceutical list<sup>4</sup> for the provision of pharmaceutical services<sup>5</sup> from premises in a primary care trust's area<sup>6</sup>;
- 227 (2) who is already included in a pharmaceutical list but wishes: (a) to open, within a primary care trust's area, additional premises from which to provide the same or different pharmaceutical services<sup>7</sup>; (b) to change the premises from which he provides pharmaceutical services to other premises within that area from which he wishes to provide the same or different pharmaceutical services<sup>8</sup>; or (c) to provide from his existing premises in that area pharmaceutical services other than those already listed in relation to him<sup>9</sup>; or
- 228 (3) who is already included in a pharmaceutical list of a neighbouring primary care trust but wishes to change the premises within the neighbourhood from which he provides pharmaceutical services to other premises in the area of the primary care trust to which he makes an application<sup>10</sup> and the change is a minor relocation<sup>11</sup>, and the same pharmaceutical services will be provided<sup>12</sup>,

must apply to the primary care trust providing the prescribed information<sup>13</sup>. A person applying in accordance with head (1) above must also provide the prescribed information and undertakings<sup>14</sup>.

A person who wishes to be included in a primary care trust's pharmaceutical list pursuant to a determination<sup>15</sup> made by the Secretary of State<sup>16</sup>, or as a temporary chemist<sup>17</sup>, must apply under other provisions<sup>18</sup>, and not under the provisions set out above<sup>19</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the meaning of 'doctor' see PARA 345 note 4.

3 As to the meaning of 'dentist' see PARA 353 note 4.

4 As to the meaning of 'pharmaceutical list' see PARA 353.

5 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(a). As to primary care trusts see PARA 111. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(b)(i).

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(b)(ii).

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(b)(iii).

10 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5.

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(c)(i).

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(c)(ii).

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1) (reg 5(1), (2) amended by see SI 2005/1501). As to the prescribed information see Sch 4 Pt 1. Where an application has been granted under reg 6 (see PARA 355) or reg 7 (see PARA 356), no further application may be granted under reg 6 or 7 in relation to those new premises for a period of 12 months beginning with the date on which the applicant commenced the provision of pharmaceutical services from the new premises unless the primary care trust for good cause allows him to make an application before the end of that period: reg 5(5).

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(2) (as amended: see note 13). As to the prescribed information and undertakings see reg 69A (added by SI 2005/1501), and the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 4 Pt 3.

15 Ie pursuant to a determination made by the Secretary of State under the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4 (see PARA 422) or under the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 15 (see PARA 441). As to the Secretary of State see PARA 6 note 8.

16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(3)(a), (aa) (reg 5(3)(a) amended, (3)(aa) added, by SI 2006/552).

17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(3)(b). As to the meaning of 'temporary chemist' see PARA 399 note 2.

18 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10 (see PARA 359) or reg 54 (see PARA 399) as the case may be.

19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(3). In Pt 2 (regs 4-41) and in reg 54 and Sch 4 and unless the context otherwise requires, 'applicant' and 'application' must be construed accordingly: reg 5(4).

## UPDATE

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

### **354 Applications for inclusion in or amendment to a pharmaceutical list**

NOTES 6-8--A primary care trust must not grant an application to which SI 2005/641 reg 5(1)(a) or (b)(i) or (ii) applies if (1) a person on a pharmaceutical list, which may or may not be the applicant, is providing or has undertaken to provide pharmaceutical services ('the existing services') from the premises to which the application relates, or adjacent premises; and (2) the primary care trust is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as

the existing services, and so the premises to which the application relates and the existing listed premises should be considered as one site: reg 17A (added by SI 2009/2205).

NOTE 14--SI 2005/641 Sch 4 Pt 3 amended: SI 2010/914.

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### **355. Applications involving a minor relocation within a primary care trust's area.**

In the case of an application for admission to a pharmaceutical list<sup>1</sup> where the applicant intends to change within the neighbourhood the premises from which he provides pharmaceutical services<sup>2</sup>, being the same services as he intends to provide from the new premises, and the primary care trust<sup>3</sup> is satisfied that the change is a minor relocation<sup>4</sup>, and the provision of pharmaceutical services will not be interrupted (except for such period as the trust may for good cause allow)<sup>5</sup>, the trust must grant the application<sup>6</sup>. Except in the case of a minor relocation of less than 500 metres<sup>7</sup>, a primary care trust must determine such an application in accordance with the statutory procedures<sup>8</sup>.

Where the minor relocation is a minor relocation of less than 500 metres<sup>9</sup>, the primary care trust must determine the application without giving notice of the application<sup>10</sup> or hearing<sup>11</sup> any oral representations<sup>12</sup> and grant the application<sup>13</sup>, unless, within the period of 30 days beginning with the date of receipt of the application it notifies the applicant that it considers that it is desirable that the application be determined as if it were a minor relocation of 500 metres or more<sup>14</sup>. Where the primary care trust determines that an application for a minor relocation of less than 500 metres should be determined as if it were a minor relocation of 500 metres or more, it must send the applicant a statement in writing<sup>15</sup> setting out its decision and its reasons for it<sup>16</sup>, and the applicant's right of appeal<sup>17</sup>. The applicant may within the period of 30 days beginning with the date of receipt of such notification, appeal in writing to the Secretary of State<sup>18</sup> against that decision<sup>19</sup>. The Secretary of State may, when determining the appeal, confirm the decision of the primary care trust<sup>20</sup>, grant the appeal<sup>21</sup>, or grant the application<sup>22</sup>. The Secretary of State must notify the applicant and the primary care trust of his determination and include with the notification a written statement of the reasons for his determination<sup>23</sup>. Where the determination of the Secretary of State is to grant the appeal, the primary care trust must within the period of 30 days determine the application<sup>24</sup>.

1    le an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(b): see PARA 354.

2    As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

3    As to primary care trusts see PARA 111.

4    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(1)(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(1)(b).

6    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(1) (reg 6(1) amended, (1A), (1B) added, by SI 2005/1501). Such a case is subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 9 (see PARA 358) and reg 21(10) (see PARA 367) and accordingly regs 11-20 (see PARAS 360-366) do not apply: reg 6(1) (amended by SI 2006/3373). Where the application for the existing premises was exempt from the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12 (see PARA 361) by reason of reg 13(1)(a) (being premises within an approved retail area: see PARA 362), the provisions of reg 6(1) and (2)-(9) (see the text to notes 7-24) do not apply to the current application unless the new premises are within the same approved retail area: reg 6(1A) (as so added). Where a relocation to new premises has taken place pursuant to reg 6(1A), and a further application is made to relocate from those premises, the provisions of reg 6(1) and (2)-(9) do not apply to the

current application unless the new premises are within the same approved retail area: reg 6(1B) (as so added). As to the notification of applications under reg 6 see reg 23 (amended by SI 2006/3373).

7     Ie except in a case where the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(3) applies: see the text to notes 9-14.

8     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(2). The statutory procedures are those set out in reg 23 (see note 6), regs 24(1), (3)-(6), 25-27 (see PARAS 370-373) and reg 29 (see PARA 375): see reg 6(2).

9     Ie a minor relocation to premises which are less than 500 metres by the most practicable route by foot from the applicant's existing premises: see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(3).

10    Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 23: see note 6.

11    Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24: see PARA 370.

12    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(3)(a).

13    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(3)(b).

14    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(3). 'A minor relocation of 500 metres or more' is a minor relocation to premises which are 500 metres or more by the most practicable route by foot from the applicant's existing premises: see reg 6(3).

15    Except where expressly provided to the contrary, any document which is required or authorised to be given or sent to a person or body under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, may be given or sent by delivering it to the person or, in the case of a body, to the secretary or general manager of that body, or by sending it in a pre-paid letter addressed to that person or, in the case of a body, to the secretary or general manager of that body at his usual or last known address, and delivering it includes sending it electronically to an electronic address which that person has notified for the purpose: reg 2(3). As to the meaning of 'writing' see PARA 7 note 2.

16    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(4)(a).

17    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(4)(b).

18    As to the Secretary of State see PARA 6 note 8.

19    See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(5). A notice of appeal must contain a concise statement of the grounds of appeal: reg 6(6).

20    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(7)(a).

21    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(7)(b).

22    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(7)(c).

23    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(8) (amended by SI 2006/3373).

24    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(9). Such determination is to be in accordance with reg 6(3)(a) (see the text to notes 9-12): see reg 6(9).

## UPDATE

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of



pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

**355 Applications involving a minor relocation within a primary care trust's area**

NOTE 6--SI 2005/641 reg 23 further amended: SI 2008/528, SI 2009/2205.

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### **356. Applications involving a minor relocation between neighbouring primary care trusts.**

In the case of an application for admission to a pharmaceutical list<sup>1</sup> where: (1) the primary care trust<sup>2</sup> is satisfied that the change is a minor relocation<sup>3</sup> and the provision of pharmaceutical services<sup>4</sup> will not be interrupted (except for such period as the trust may for good cause allow)<sup>5</sup>; and (2) the applicant consents to the removal of his name from the pharmaceutical list of the primary care trust in which his existing premises are located in respect of those premises with effect from the date on which he commences to provide pharmaceutical services from his new premises<sup>6</sup>, the primary care trust must grant the application<sup>7</sup>. Except in the case of a minor relocation of less than 500 metres<sup>8</sup>, a primary care trust must determine such an application in accordance with the statutory procedures<sup>9</sup>.

Where the minor relocation is a minor relocation of less than 500 metres<sup>10</sup>, the primary care trust must determine the application without giving notice of the application<sup>11</sup> or hearing<sup>12</sup> any oral representations<sup>13</sup> and grant the application<sup>14</sup>, unless within the period of 30 days beginning with the date of receipt of the application it notifies the applicant that it considers that it is desirable that the application be determined as if it were a minor relocation of 500 metres or more<sup>15</sup>. Where the primary care trust so determines that an application for a minor relocation of less than 500 metres should be determined as if it were a minor relocation of 500 metres or more, it must send the applicant a statement in writing<sup>16</sup> setting out its decision and its reasons for it<sup>17</sup> and the applicant's right of appeal<sup>18</sup>. The applicant may, within the period of 30 days beginning with the date of receipt of the notification, appeal in writing to the Secretary of State<sup>19</sup> against that decision<sup>20</sup>. The Secretary of State may, when determining the appeal, confirm the decision of the primary care trust<sup>21</sup>, grant the appeal<sup>22</sup>, or grant the application<sup>23</sup>. The Secretary of State must notify the applicant and the primary care trust of his determination and include with the notification a written statement of the reasons for his determination<sup>24</sup>. Where the determination of the Secretary of State is to grant the appeal, the primary care trust must within the period of 30 days determine the application<sup>25</sup>.

1     le an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(c): see PARA 354. As to the meaning of 'pharmaceutical list' see PARA 353.

2     As to primary care trusts see PARA 111.

3     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(1)(a)(i). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4     As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

5     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(1)(a)(ii).

6     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(1)(b).

7     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(1) (reg 7(1) amended, (1A), (1B) added, by SI 2005/1501). Such a case is subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 9 (see PARA 358) and reg 21(10) (see PARA 367) and accordingly regs 11-20 (see PARAS 360-366) do not apply: see reg 7(1) (amended by SI 2006/3373). Where the application for the existing premises was exempt from the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12 (see PARA 361) by reason of reg 13(1)(a) (being premises within

an approved retail area: see PARA 362), the provisions of reg 7(1) and (2)-(9) (see the text to notes 8-25) do not apply to the current application unless the new premises are within the same approved retail area: reg 7(1A) (as so added). Where a relocation to new premises has taken place pursuant to reg 7(1A) and a further application is made to relocate from those premises, the provisions of reg 7(1) and (2)-(9) do not apply to the current application unless the new premises are within the same approved retail area: reg 7(1B) (as so added). As to the notification of applications under reg 7 see reg 23 (amended by SI 2006/3373).

8     Ie a case to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(3) applies: see the text to notes 10-15.

9     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(2). The statutory procedures are those set out in reg 23 (see note 7), regs 24(1), (3)-(6), 25-27 (see PARAS 370-373) and reg 29 (see PARA 375): see reg 7(2).

10    Ie the minor relocation is to premises which are less than 500 metres by the most practicable route by foot from the applicant's existing premises: see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(3).

11    Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 23: see note 7.

12    Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24: see PARA 370.

13    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(3)(a).

14    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(3)(b).

15    See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(3). 'A minor relocation of 500 metres or more' is a minor relocation to premises which are 500 metres or more by the most practicable route by foot from the applicant's existing premises: see reg 7(3).

16    As to the sending of documents see PARA 355 note 15. As to the meaning of 'writing' see PARA 7 note 2.

17    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(4)(a).

18    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(4)(b).

19    As to the Secretary of State see PARA 6 note 8.

20    See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(5). A notice of appeal must contain a concise statement of the grounds of appeal: reg 7(6).

21    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(7)(a).

22    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(7)(b).

23    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(7)(c).

24    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(8) (amended by SI 2006/3373).

25    See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 7(9). Such determination is to be in accordance with reg 7(3)(a) (see the text to notes 10-13): see reg 7(9).

## UPDATE

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408.

In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

**356 Applications involving a minor relocation between neighbouring primary care trusts**

NOTE 7--SI 2005/641 reg 23 further amended: SI 2008/528, SI 2009/2205.

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### **357. Applications involving a change of ownership.**

Where the applicant for admission to a pharmaceutical list<sup>1</sup> intends to provide pharmaceutical services<sup>2</sup> at premises from which those services are, at the time of the application, provided by a person<sup>3</sup> who is included in a pharmaceutical list, and the primary care trust<sup>4</sup> is satisfied that the same services will be provided from those premises<sup>5</sup>, and the provision of pharmaceutical services will not be interrupted (except for such period as the trust may for good cause allow)<sup>6</sup>, the trust must grant the application<sup>7</sup>. A primary care trust must determine such an application in accordance with the statutory procedures<sup>8</sup>.

Where a temporary chemist<sup>9</sup> wishes to make an application<sup>10</sup> on behalf of the suspended chemist<sup>11</sup> in whose place he is providing pharmaceutical services, and that application is to relate to his provision of those services as a temporary chemist, and the application is one falling within these provisions<sup>12</sup>, he must, before making the application, obtain the written<sup>13</sup> consent of the primary care trust to the application<sup>14</sup>.

1 As to the meaning of 'pharmaceutical list' see PARA 353.

2 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to primary care trusts see PARA 111.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 8(1)(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 8(1)(b).

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 8(1). Where the applicant is not already on that primary care trust's pharmaceutical list, reg 8(1) is subject to reg 8(2) (see the text to notes 9-14) and reg 11 (see PARA 360), reg 19 (see PARA 365) and reg 21 (see PARA 367), and accordingly regs 12-18 (see PARAS 361-364, 406) and reg 20 (see PARA 366) do not apply: reg 8(1)(i). Where the applicant is already on that primary care trust's pharmaceutical list, reg 8(1) is subject to reg 8(2) and accordingly regs 11-21 (see PARAS 360-367) do not apply: reg 8(1)(ii).

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 8(3). The statutory procedures are those set out in reg 24(1), (3)-(7) (see PARA 370), regs 26-29 (see PARAS 372-375), and where reg 8(1)(i) (see note 7) applies, in addition reg 24(2) (see PARA 370): see reg 8(3).

9 As to the meaning of 'temporary chemist' see PARA 399 note 2.

10 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(b): see PARA 354.

11 As to the meaning of 'chemist' see PARA 349 note 1.

12 Ie falling within the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 8(1): see the text to notes 1-7.

13 As to the meaning of 'written' see PARA 7 note 2.

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 8(2).

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SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

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### **358. Applications following suspension from the list.**

Where: (1) the applicant for admission to a pharmaceutical list<sup>1</sup> intends to provide pharmaceutical services<sup>2</sup> (otherwise than as a temporary chemist<sup>3</sup>) from premises from which, at the time of the application, no services are being provided because the person<sup>4</sup> who had undertaken to provide services from those premises is suspended from the pharmaceutical list<sup>5</sup>; and (2) the primary care trust<sup>6</sup> is satisfied that the applicant will provide the same services as were provided by that person prior to his suspension<sup>7</sup>, the primary care trust must grant the application<sup>8</sup>. A primary care trust must determine such an application in accordance with the statutory procedures<sup>9</sup>.

Where a temporary chemist wishes to make an application for admission to a pharmaceutical list<sup>10</sup> on behalf of the suspended chemist in whose place he is providing pharmaceutical services, that application must be dealt with as if the application had been made by the suspended chemist whilst not suspended from the pharmaceutical list<sup>11</sup>.

1 As to the meaning of 'pharmaceutical list' see PARA 353. As to applications see PARA 354.

2 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

3 As to the meaning of 'temporary chemist' see PARA 399 note 2.

4 As to the meaning of 'person' see PARA 17 note 2.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 9(1)(a). As to suspension from the list see PARAS 394, 395. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 As to primary care trusts see PARA 111.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 9(1)(b).

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 9(1). Where the applicant is not already on that primary care trust's pharmaceutical list, such grant is subject to reg 11 (see PARA 360), reg 19 (see PARA 365) and reg 21 (see PARA 367) and accordingly regs 12-18 (see PARAS 361-364, 406) and reg 20 (see PARA 366) do not apply: reg 9(1)(i). Where the applicant is already on that primary care trust's pharmaceutical list, such grant is subject to reg 11(2) (see PARA 360) and accordingly reg 11(1) (see PARA 360) and regs 12-21 (see PARAS 361-367) do not apply: reg 9(1)(ii).

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 9(2). The statutory procedures are those set out in reg 24(1), (3)-(7) (see PARA 370) and regs 26-29 (see PARAS 372-375), and where reg 9(1)(i) (see note 8) applies, in addition reg 24(2) (see PARA 370): see reg 9(2).

10 I.e. an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(b): see PARA 354.

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 9(3). However, in such a case reg 8(2) (see PARA 357) also applies in the case of an application falling within reg 8(1) (see PARA 357): see reg 9(3).

## **UPDATE**

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).



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### **359. Right of return to pharmaceutical lists.**

The following provisions apply if the Secretary of State<sup>1</sup> makes a determination<sup>2</sup> that a person<sup>3</sup> is to be given the right of return to a primary care trust's<sup>4</sup> pharmaceutical list<sup>5</sup> on making an application for his name to be included in that list after ceasing to provide local pharmaceutical services<sup>6</sup>, and the following conditions are satisfied<sup>7</sup>. The conditions are that: (1) the period of time between the cessation of provision of local pharmaceutical services by the applicant and the commencement of provision of pharmaceutical services by the applicant will be such that the provision of such services will be continuous (except for such period as the primary care trust may for good cause allow)<sup>8</sup>; and (2) the determination or determinations relevant to the application have not been invalidated by any subsequent determination, and that any conditions specified in the determination or determinations are satisfied<sup>9</sup>.

A person making such an application for inclusion of his name in a pharmaceutical list must apply to the primary care trust giving the prescribed information<sup>10</sup> while he is still providing local pharmaceutical services under a pharmacy pilot scheme<sup>11</sup> or an LPS scheme, and in addition he must<sup>12</sup> make clear that the application is made by virtue of these provisions<sup>13</sup> and attach copies of all determinations relevant to the application<sup>14</sup>. Certain applicants<sup>15</sup> must, in addition, provide the prescribed information, declarations and undertakings<sup>16</sup>. If a person has made an application in the prescribed manner<sup>17</sup>, the primary care trust must grant the application<sup>18</sup>. Any conditions imposed by a primary care trust<sup>19</sup> or by the Secretary of State<sup>20</sup> which are still in force<sup>21</sup> are unaffected by the grant of an application<sup>22</sup>.

A primary care trust must, as soon as is practicable, and in any event within the period of four months<sup>23</sup> beginning with the date of receipt of the application unless the trust has good cause to require a longer period, give notice of its decision on an application to the listed persons or bodies<sup>24</sup>. Where a primary care trust grants an application, the applicant must be included in the relevant pharmaceutical list or lists only if, not less than 14 days before the expiry of six months after the date on which the grant was notified to him by the trust<sup>25</sup>, he notifies the trust<sup>26</sup> that he will, within the next 14 days, commence the provision of services in respect of which the application was made at the premises to which the application related<sup>27</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 I.e. under the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4 (see PARA 422) or under the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 15 (see PARA 441): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(1)(a), (b) (reg 10(1) substituted by SI 2006/552). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to primary care trusts see PARA 111.

5 As to the meaning of 'pharmaceutical list' see PARA 353.

6 'Local pharmaceutical services' means local pharmaceutical services under an LPS scheme, or an ESP pilot scheme: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1) (definition substituted by SI 2006/552). 'LPS scheme' has the same meaning as in the National Health Service Act 2006 Sch 12 para 1(2) (see PARA 431): National Health Service (Pharmaceutical Services) Regulations 2005, SI

2005/641, reg 2(1) (definition added by SI 2006/552); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). 'ESP pilot scheme' means an essential small pharmacies local pharmaceutical services pilot scheme: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1) (definition added by SI 2006/552). As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(1) (as substituted: see note 2). This provision is expressed to be subject to reg 69A: see note 16.

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(2)(a).

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(2)(b).

10 As to the prescribed information see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 4 Pt 1 (amended by SI 2008/683).

11 'Pharmacy pilot scheme' has the same meaning as the term 'pilot scheme' in the National Health Service Act 2006 s 134(2) (see PARA 419): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(3) (amended by SI 2006/552).

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(3)(a).

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(3)(b). Except as specified in reg 10(6) (see note 18) and 10(8) (see the text to notes 19-22), regs 5-9 (see PARAS 354-358), reg 11(1) (see PARA 360), regs 12-28 (see PARAS 361-374) and regs 30-42 (see PARAS 368, 376-379, 381-384) do not apply to an application under reg 10: reg 10(13).

15 I.e. persons who meet the conditions that: (1) the applicant is not, at the time of his application to a primary care trust, already included in that trust's pharmaceutical list (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(4), (7)(a)); and (2) the applicant was not, immediately before the date on which he commenced the provision of local pharmaceutical services, included in that trust's pharmaceutical list (reg 10(4), (7)(b)).

16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(4) (amended by SI 2005/1501). As to the prescribed information, declarations and undertakings see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 69A (added by SI 2005/1501) and the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 4 Pt 3.

17 I.e. in the manner described in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(3) (see the text to notes 11-14) and (if applicable) reg 10(4) (see the text to notes 15-16).

18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(5). However, notwithstanding the determination relevant to his application, if an applicant meets the conditions specified in reg 10(7) (see note 15), the provisions of reg 19 (see PARA 365), reg 21 (see PARA 367), reg 26 (see PARA 372), reg 28 (see PARA 374) and reg 30 (see PARA 376) apply to his application: reg 10(6). The application is also subject to reg 11(2) (see PARA 360): see reg 10(6).

19 I.e. under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20: see PARA 366.

20 I.e. under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(18) (b) (see PARA 375), reg 32(10)(b) (see PARA 378) or reg 38(14)(b) (see PARA 383).

21 I.e. by virtue of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(3): see PARA 366.

22 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(8).

23 As to the meaning of 'month' see PARA 28 note 16.

24 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(9) (amended by SI 2006/3373). The listed person or bodies are those in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 27(1)(a) (see PARA 373): see reg 10(9). As to the giving of notice see PARA 355 note 15.

25     le in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(9): see the text to notes 23-24. For these purposes, the date of the notification of a grant of an application is the day after the expiry of the period of 30 days beginning on the date on which notice of that decision is given under reg 10(9): reg 10(12).

26     le in the form set out in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 4 Pt 2.

27     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(10). Where, at any time after making an application, but before the expiry of the six months referred to in reg 10(10), the applicant notifies the primary care trust that he intends to change within the neighbourhood the premises from which he intends to provide pharmaceutical services, being the same services as those named in the application, and the trust is satisfied that the change is a minor relocation, it may amend the premises named in the original application: reg 10(11).

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*(b) Determination of Applications*

**UPDATE**

**354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

**359 Right of return to pharmaceutical lists**

NOTE 10--SI 2005/641 Sch 4 further amended: SI 2009/2205.

NOTE 16--SI 2005/641 Sch 4 Pt 3 amended: SI 2010/914.

**360. Refusal: general provisions.**

An application for admission to a pharmaceutical list<sup>1</sup>, which is made by a person<sup>2</sup> who qualified as a pharmacist<sup>3</sup> in an EEA state other than the United Kingdom<sup>4</sup>, or in Switzerland, must not be granted unless the applicant satisfies the primary care trust<sup>5</sup> that he has the knowledge of English which, in the interests of himself and persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services<sup>6</sup> in the primary care trust's area<sup>7</sup>.

A primary care trust must refuse an application in which a pharmacist does not offer to provide all of the essential services<sup>8</sup>.

1    le other than an application to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6, 7, 8(1)(b)(ii) or 9(3) (see PARAS 355-358) applies: reg 11(1). As to the meaning of 'pharmaceutical list' see PARA 353. As to applications see PARA 354.

2    As to the meaning of 'person' see PARA 17 note 2.

- 3 As to the meaning of 'pharmacist' see PARA 345 note 3.
- 4 As to the meaning of 'EEA state' see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Legislative and Regulatory Reform Act 2006 s 26(1)). As to the meaning of 'United Kingdom' see PARA 15 note 8.
- 5 As to primary care trusts see PARA 111.
- 6 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.
- 7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 11(1) (amended by SI 2007/289).
- 8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 11(2). As to essential services see Sch 1 para 3.

## **UPDATE**

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

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### **361. Necessary or desirable test.**

An application for admission to a pharmaceutical list<sup>1</sup> must be granted by the primary care trust<sup>2</sup> only if it is satisfied that it is necessary or desirable to grant the application in order to secure, in the neighbourhood in which the premises from which the applicant intends to provide the services are located, the adequate provision, by persons<sup>3</sup> included in a pharmaceutical list, of the services, or some of the services, specified in the application<sup>4</sup>. This test is known as the 'necessary or desirable test'<sup>5</sup>. In considering whether the necessary or desirable test is satisfied, a primary care trust must have regard in particular to<sup>6</sup>:

- 229 (1) whether or not any of the following services are already provided by persons in the neighbourhood in which the premises named in the application are located: (a) any pharmaceutical services<sup>7</sup> or directed services<sup>8</sup> specified in the application provided by persons included in a pharmaceutical list, or any directed services the applicant agrees to provide if his name is included in the pharmaceutical list<sup>9</sup>; or (b) any local pharmaceutical services<sup>10</sup> provided under a pharmacy pilot scheme<sup>11</sup> or an LPS scheme<sup>12</sup> which are of the same description as any pharmaceutical services or directed services specified in the application<sup>13</sup>;
- 230 (2) whether the recipients of pharmaceutical services already have a reasonable choice with regard to: (a) the pharmaceutical services or directed services provided in the neighbourhood in which the premises named in the application are located, by persons included in a pharmaceutical list<sup>14</sup>; and (b) the persons included in a pharmaceutical list from whom such recipients may obtain pharmaceutical services or directed services in the neighbourhood in which the premises named in the application are located<sup>15</sup>;
- 231 (3) any other information available to the primary care trust which, in its opinion, is relevant to the consideration of the application<sup>16</sup>; and
- 232 (4) any representations received<sup>17</sup> by the primary care trust<sup>18</sup>.

In considering whether the necessary or desirable test is satisfied, a primary care trust may also have regard to any pharmaceutical services or directed services that the applicant proposes to provide in that neighbourhood in circumstances where he is not obliged to provide those services<sup>19</sup>. The primary care trust must not take into account pharmaceutical services provided from premises at which pharmaceutical services are provided by a distance selling chemist<sup>20</sup> when considering the pharmaceutical services already provided in the neighbourhood<sup>21</sup>.

1 As to the meaning of 'pharmaceutical list' see PARA 353. As to applications see PARA 354.

2 As to primary care trusts see PARA 111.

3 As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(1). This provision is subject to reg 13 (see PARA 362), reg 19 (see PARA 365), reg 21 (see PARA 367), reg 25 (see PARA 371) and reg 26 (see PARA 372); reg 12(1). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(1). As to exemptions from the necessary or desirable test see PARA 362. As to the interpretation of the test see the following cases decided under the preceding regulations *R v Humberside Family Health Services Authority, ex p Moore* (1995) 30 BMLR 68; *R v North Yorkshire Family Health Services Authority, ex p Wilson* (1996) 33 BMLR 12, (1996) Times, 28 June; *R v Yorkshire Regional Health Authority, ex p Baker* (1996) 35 BMLR 118; *R v Family Health Services Appeal Authority, ex p Tesco Stores Ltd* (1999) Times, 25 August, [1999] All ER (D) 824; *R v Family Health Services Appeal Authority, ex p E Moss Ltd (Boots the Chemists, interested party)* (1999) 48 BMLR 204, CA; *R (on the application of Lowe) v Family Health Services Appeal Authority* [2001] EWCA Civ 128. See also *R (on the application of Assura Pharmacy Ltd) v National Health Service Litigation Authority (Family Health Services Appeal Unit)* [2008] EWHC 289 (Admin), [2008] All ER (D) 304 (Feb).

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(2). This provision is subject to regs 25 and 26 (see PARAS 371, 372) and reg 12(4) (see the text to notes 20-21): reg 12(2).

7 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

8 As to the meaning of 'directed services' see PARA 345 note 5.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(2)(a)(i) (reg 12(2)(a)(i), (b)(i), (ii), (3) amended by SI 2005/1015).

10 As to the meaning of 'local pharmaceutical services' see PARA 359 note 6.

11 As to the meaning of 'pharmacy pilot scheme' see PARA 359 note 11.

12 As to the meaning of 'LPS scheme' see PARA 359 note 6.

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(2)(a)(ii) (amended by SI 2005/1015; SI 2006/552).

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(2)(b)(i) (as amended: see note 9).

15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(2)(b)(ii) (as amended: see note 9).

16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(2)(c).

17 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 23(2) or (3) (see PARAS 355, 356) (reg 12(2)(d)(i)); or where the application is in respect of premises in a controlled locality, under reg 33(4) from a person mentioned in reg 33(2)(a)-(d), (f)-(j) or (3)(a)-(d), (f) or (g) (see PARA 379) (reg 12(2)(d)(ii)). As to the meaning of 'controlled locality' see PARA 377.

18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(2)(d).

19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(3) (as amended: see note 9).

20 'Distance selling chemist' means a chemist who provides pharmaceutical services from distance selling premises: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1). As to the meaning of 'chemist' see PARA 349 note 1. As to the meaning of 'distance selling premises' see PARA 362.

21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12(4).

## UPDATE

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a

temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

### **361 Necessary or [expedient] test**

TEXT AND NOTES 3, 5, 6, 19--For the word 'desirable' substitute 'expedient': SI 2005/641 reg 12(1)-(3) (amended by SI 2009/2205).

NOTES 5, 14, 15--The issue of reasonable choice must be looked at compendiously, and not necessarily separately in relation to each of the elements of pharmaceutical services and the provider of those services: *R (on the application of Assura Pharmacy Ltd) v National Health Service Litigation Authority (Family Health Services Appeal Unit)* [2008] EWCA Civ 1356, (2009) 105 BMLR 161 (reversing [2008] EWHC 289 (Admin), [2008] All ER (D) 304 (Feb) in part).



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### **362. Exemption from the necessary or desirable test.**

Unless the applicant for admission to a pharmaceutical list<sup>1</sup> requests otherwise, or the premises to which his application relates are in a neighbourhood in which local pharmaceutical services<sup>2</sup> are or are to be provided, the necessary or desirable test<sup>3</sup> does not apply to an application in respect of: (1) premises which are in an approved retail area<sup>4</sup>; (2) premises which the applicant is willing to keep open for at least 100 hours per week for the provision of pharmaceutical services<sup>5</sup>; (3) premises which are in a new one-stop primary care centre<sup>6</sup>; or (4) premises at which essential services<sup>7</sup> are to be provided but the means of providing those services are such that all persons<sup>8</sup> receiving them do so otherwise than at those premises (known as 'distance selling premises')<sup>9</sup>.

As regards an application to which head (2) above applies, if the application is granted it is a condition of the applicant's inclusion in a pharmaceutical list (and so a term of service<sup>10</sup>) that the premises to which the application relates are kept open for at least 100 hours per week for the provision of pharmaceutical services, and the primary care trust<sup>11</sup> may not vary or remove that condition<sup>12</sup>. As regards an application to which head (1), (2) or (3) above applies the application may only be granted if the applicant agrees to a condition of his inclusion in the pharmaceutical list that he will provide, where requested to do so by the primary care trust, and at the premises to which the application relates, such directed services<sup>13</sup> as the trust may specify<sup>14</sup>; and if the application is granted, it is a condition of the applicant's inclusion in a pharmaceutical list (and so a term of service) that he provides, where requested to do so by the trust and at the premises to which the application relates, the directed services specified<sup>15</sup> by the trust<sup>16</sup>. As regards an application to which head (4) above applies, if the application is granted it is a condition of the applicant's inclusion in a pharmaceutical list (and so a term of service) that he does not offer to provide pharmaceutical services to persons who are present at the premises to which the application relates<sup>17</sup>, and the means by which he provides pharmaceutical services are such that the person receiving them does so otherwise than at the premises to which the application relates<sup>18</sup>; and the primary care trust may not vary or remove those conditions<sup>19</sup>.

1 As to the meaning of 'pharmaceutical list' see PARA 353. As to applications see PARA 354.

2 As to the meaning of 'local pharmaceutical services' see PARA 359 note 6.

3 I.e. the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12: see PARA 361.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(1)(a). An approved retail area is one within the meaning of reg 15 (see PARA 363): reg 13(1)(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(1)(b). As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(1)(c). A new one-stop primary care centre is one within the meaning of reg 16 (see PARA 364): reg 13(1)(c).

7 As to essential services see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 1 para 3.

8 As to the meaning of 'person' see PARA 17 note 2.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(1)(d). A primary care trust must not grant an application to which reg 13(1)(d) applies if the premises to which the application relates are on the same site or in the same building as the premises of a provider of primary medical services with a patient list: reg 17. 'Patient list' means a list of patients kept by a primary care trust in respect of arrangements for the provision of primary medical services: see reg 2(1). As to primary medical services see PARA 241.

10 As to terms of service see PARA 347.

11 As to primary care trusts see PARA 111.

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(2)(a). The primary care trust may only remove a person from the pharmaceutical list for breach of that condition if: (1) that person has repeatedly breached the condition, or is likely to breach the condition repeatedly, without good cause (reg 13(2)(b)(i)); or (2) the breach is, in all the circumstances, a serious breach and as a consequence of it the safety of a patient has been or may be put at serious risk (reg 13(2)(b)(ii)).

13 As to the meaning of 'directed services' see PARA 345 note 5.

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(3)(a).

15 Ie for the purposes of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(3) read with reg 14 (see note 16): reg 13(3)(b).

16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(3)(b). A person in respect of whom a condition is imposed by virtue of reg 13(3)(b) may apply to a primary care trust for it to vary the directed services that it has specified as regards him for the purposes of that condition, but he may only do so after at least three years have elapsed since the condition was imposed in respect of him (reg 14(1)(a)) or during which the primary care trust has not required him to provide the directed services (reg 14(1)(b)). As to such applications and their determination see reg 14(2)-(10) (reg 14(6), (10) amended by SI 2006/3373).

17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(4)(a).

18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(4)(b).

19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(4).

## UPDATE

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

### **362 Exemption from the necessary or [expedient] test**

TEXT AND NOTE 3--Now the 'expedient' test; see PARA 361.

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### **363. Approved retail areas.**

Premises are in an 'approved retail area' if they are in a retail area that has been approved by the Secretary of State<sup>1</sup> for the purposes of the exemption<sup>2</sup> from the necessary or desirable test<sup>3</sup>. Approval of an area must only be granted if the Secretary of State is satisfied that it is in respect of:

- 233 (1) an area which comprises a discrete site or building which is a shopping centre, a retail park or retail premises<sup>4</sup>, or for which is planned a discrete site or building which, if the permitted development is carried out (and it may, at the time of the approval, be part carried out), will be a shopping centre, a retail park or retail premises<sup>5</sup>;
- 234 (2) a retail area which is not or will not be part of: (a) a primary shopping area which is or is part of a city, metropolitan or town centre<sup>6</sup>, or a district centre which performs the role of a city, metropolitan or town centre<sup>7</sup>; or (b) an edge of centre location which relates to a city, metropolitan or town centre<sup>8</sup>, or a district centre which performs the role of a city, metropolitan or town centre<sup>9</sup>; and in determining whether or not an area is a 'primary shopping area' or an 'edge of centre' location for these purposes, regard must be had to any relevant national planning policy guidance<sup>10</sup>; and
- 235 (3) a retail area which exceeds or will exceed the minimum size<sup>11</sup>;

but approval may otherwise be granted by the Secretary of State as he sees fit<sup>12</sup>.

The Secretary of State must publish, in such manner and at such intervals as he sees fit, a list of retail areas which are for the time being approved by him<sup>13</sup>. The Secretary of State may withdraw his approval of a retail area in appropriate circumstances<sup>14</sup>.

1    Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15. As to the Secretary of State see PARA 6 note 8.

2    Ie the exemption in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(1)(a): see PARA 362.

3    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(1). As to the necessary or desirable test see PARA 361. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(2)(a)(i).

5    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(2)(a)(ii). An area as in head (1) in the text is known as a 'retail area': reg 15(2)(a).

6    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(2)(b)(i)(aa).

7    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(2)(b)(i)(bb).

8    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(2)(b)(ii)(aa).

9    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(2)(b)(ii)(bb).

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(2)(b). As to national planning policy guidance see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 9.

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(2)(c). For these purposes a retail area exceeds or will exceed the minimum size if: (1) in the case of a shopping centre or retail premises, it is or will be, or incorporates or will incorporate, leasehold retail premises the gross floor space of which exceeds or will exceed 15,000 square metres (reg 15(3)(a)); or (2) in the case of a retail park, it, together with any adjacent retail area, incorporates or will incorporate leasehold retail premises the gross floor space of which exceeds or will exceed 15,000 square metres (reg 15(3)(b)).

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(2).

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(4).

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 15(5).

## **UPDATE**

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

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### **364. New one-stop primary care centres.**

Premises are in a new one-stop primary care centre if they are in a one-stop primary care centre which a primary care trust<sup>1</sup> on or after 1 April 2005 has for the first time included in its strategic service development plan (or if it has no such plan, in a written<sup>2</sup> plan that achieves the same purpose as a strategic service development plan<sup>3</sup>), at which on or after 1 April 2005 the services of health care professionals<sup>4</sup> will be provided for the first time<sup>5</sup>; or as a consequence of substantial new development or redevelopment, the services of a broad range of health care professionals will be provided for the first time<sup>6</sup>.

For these purposes, premises are a 'one-stop primary care centre' if they are in a discrete site or building: (1) at which the services of a broad range of health care professionals are, or will be, regularly and frequently provided (together, where appropriate, with other health or social services)<sup>7</sup>; (2) at which there is, or will be, one or more providers of primary medical services<sup>8</sup> with a patient list<sup>9</sup> which comprises, or patient lists which together comprise, at least 18,000 patients<sup>10</sup>; and (3) which is under the management or control of a consortium<sup>11</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'written' see PARA 7 note 2.

3 As to the preparation of plans by primary care trusts see PARA 131.

4 'Health care professional' means a person who is a member of a profession regulated by a body mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294); National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1). As to the meaning of 'person' see PARA 17 note 2.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 16(1)(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 16(1)(b).

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 16(2)(a). In determining whether the requirements of reg 16(2)(a) are met, a primary care trust must have regard to the range and number of health care professionals (apart from those who are, or who are engaged or employed by, other chemists) who are available to provide services within its area: reg 16(3). As to the meaning of 'chemist' see PARA 349 note 1.

8 As to primary medical services see PARA 241.

9 As to the meaning of 'patient list' see PARA 362 note 9.

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 16(2)(b) (substituted by SI 2005/1501).

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 16(2)(c). For these purposes a 'consortium' is an association of persons or undertakings carrying on a business together with a single management and equity structure (reg 16(2)(c)(i)), and agreed written articles of association which commit them to running a one-stop primary care centre (reg 16(2)(c)(ii)).

### **UPDATE**

**354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

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### **365. Refusal: fitness to practise grounds.**

A primary care trust<sup>1</sup> must refuse to grant an application for admission to a pharmaceutical list<sup>2</sup> if: (1) the applicant (or where the applicant is a body corporate, any director<sup>3</sup> or superintendent of the applicant) has been convicted in the United Kingdom<sup>5</sup> of murder<sup>6</sup>; (2) the applicant (or where the applicant is a body corporate, any director or superintendent of the applicant) has been convicted in the United Kingdom of a criminal offence, other than murder, which was committed after 1 April 2005 and has been sentenced to a term of imprisonment of over six months<sup>7</sup>; (3) the applicant is the subject of a national disqualification<sup>8</sup>; (4) the applicant has not updated his application in accordance with the statutory requirement<sup>9</sup>; or (5) in a case in which conditions are to be imposed on the appellant<sup>10</sup>, he does not notify the primary care trust<sup>11</sup> that he wishes to be included in its pharmaceutical list subject to the specified conditions<sup>12</sup>.

A primary care trust may refuse to grant such an application if: (a) having considered the undertakings and declarations required<sup>13</sup> and any other information in its possession in relation to the application, it considers that the applicant is unsuitable to be included in the list<sup>14</sup>; (b) having checked the information provided by the applicant<sup>15</sup>, and any further information provided<sup>16</sup>, it considers the applicant is unsuitable to be included in the list<sup>17</sup>; (c) having contacted the referees nominated by the applicant<sup>18</sup>, it is not satisfied with the references given<sup>19</sup>; (d) having checked with the NHS Business Services Authority<sup>20</sup> for any facts that it considers relevant relating to past or current fraud investigations involving or related to the applicant (and where the applicant is a body corporate, any director or superintendent of the applicant), and having considered these and any other facts in its possession relating to fraud involving or relating to the applicant (and where the applicant is a body corporate, any director or superintendent of the applicant), it considers these justify such refusal<sup>21</sup>; (e) having checked with the Secretary of State<sup>22</sup> for any facts that he considers relevant relating to past or current investigations or proceedings involving or relating to the applicant (and where the applicant is a body corporate, any director or superintendent of the applicant) and, having considered these and any other facts in its possession involving or relating to the applicant (and where the applicant is a body corporate, any director or superintendent of the applicant), it considers these justify such refusal<sup>23</sup>; or (f) it considers that admitting the applicant to the list would be prejudicial to the efficiency of the service which he would undertake to provide<sup>24</sup>. Where the primary care trust is considering refusal of an application under heads (a) to (f) above, it must consider all facts which appear to it to be relevant<sup>25</sup>.

An applicant may appeal to the Family Health Services Appeal Authority<sup>26</sup> against a decision of the primary care trust to refuse to grant his application: (i) to be included in the pharmaceutical list (including an application to be included as a temporary chemist)<sup>27</sup>; or (ii) for preliminary consent to be included in that list<sup>28</sup>, on grounds specified in heads (a) to (f) above<sup>29</sup>. An appeal must be made within the period of 28 days beginning with the date on which the primary care trust notified the applicant of the decision<sup>30</sup>, and such an appeal is by way of redetermination of the primary care trust's decision<sup>31</sup>.

1 As to primary care trusts see PARA 111.

2 The National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19 applies to an application to a primary care trust under: (1) reg 5 (see PARA 354), reg 40 (see PARA 385) or reg 54 (see PARA 399), where the applicant is not already on that trust's pharmaceutical list (reg 19(1)(a)); and (2) under reg 10



(see PARA 359) where the applicant meets the conditions specified in reg 10(7) (reg 19(1)(b)). As to the meaning of 'pharmaceutical list' see PARA 353. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

3 'Director' means a director of a body corporate, or a member of the body of persons controlling a body corporate (whether or not a limited liability partnership): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1). As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**. As to limited liability partnerships see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq.

4 'Superintendent' has the same meaning as it has in the Medicines Act 1968 s 71 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 912): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1).

5 As to the meaning of 'United Kingdom' see PARA 15 note 8.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(3)(a). As to murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 89.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(3)(b).

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(3)(c). As to national disqualification see PARA 402.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(3)(d). The statutory requirement is that under reg 26(4) (see PARA 372): see reg 19(3)(d).

10 Ie a case to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30 applies: see PARA 376.

11 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30(4): see PARA 376.

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(3)(e).

13 Ie by the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 4 Pt 3 paras 1-3: see PARA 354.

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(2)(a).

15 Ie in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 4 Pt 3 paras 4-6: see PARA 354.

16 Ie pursuant to the undertaking given in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 4 Pt 3 para 12: see PARA 354.

17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(2)(b).

18 Ie in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 4 Pt 3 para 7: see PARA 354.

19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(2)(c).

20 As to the NHS Business Services Authority see PARA 152.

21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(2)(d) (amended by SI 2006/552).

22 As to the Secretary of State see PARA 6 note 8.

23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(2)(e).

24 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(2)(f).

25 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(4). The primary care trust must in particular take prescribed matters into consideration in relation to heads (a), (b), (d) and (e) in the text: see reg 19(4)(a)-(h), (5) (reg 19(4)(f) amended by SI 2006/3373).

26 As to the Family Health Services Appeal Authority see PARA 443.

27 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(6)(a). As to the meaning of 'temporary chemist' see PARA 399 note 2.

28 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(6)(b).

29 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(6).

30 le under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(9) (see PARA 359), reg 27(1) (see PARA 373), reg 37(1) (see PARA 382) or reg 54(14) (see PARA 399) as the case may be: reg 19(7).

31 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(7).

## **UPDATE**

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

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### **366. Imposition of conditions.**

Where: (1) the premises specified in an application for admission to a pharmaceutical list<sup>1</sup> are in a controlled locality<sup>2</sup>, or are not in a controlled locality but are within 1.6 kilometres of any part of any controlled locality in which reside patients for whom a doctor<sup>3</sup> provides pharmaceutical services<sup>4</sup>, or for whom a contractor under a general medical services contract<sup>5</sup> or under arrangements for the provision of primary medical services<sup>6</sup> provides dispensing services<sup>7</sup>; and (2) the granting of the application would, in the view of the primary care trust, result in a significant change in the arrangements for the provision of pharmaceutical services, local pharmaceutical services<sup>8</sup> or dispensing services in any part of a controlled locality<sup>3</sup>, the primary care trust must, where it grants the application, consider the conditions (if any) which are to be imposed in relation to that grant<sup>10</sup>, and pending the final determination of such conditions, must not in consequence of the grant give notice to any doctor to discontinue the provision of pharmaceutical services or dispensing services to any patient<sup>11</sup>.

Where the primary care trust considers that the provision of primary medical services by any provider of such services (other than itself) or pharmaceutical services by any chemist<sup>12</sup> or local pharmaceutical services by any LPS chemist<sup>13</sup> is likely to be adversely affected in consequence of a grant<sup>14</sup>, it may impose conditions to postpone, for such period as it thinks fit, the making or termination of arrangements for the provision by a doctor or a contractor under a general medical services contract or under arrangements for the provision of primary medical services of pharmaceutical services or dispensing services<sup>15</sup>. Where a primary care trust has imposed any such conditions, or the Secretary of State has imposed any conditions<sup>16</sup>, those conditions are unaffected by the commencement or continuation of a pharmacy pilot scheme or an LPS scheme for the provision of local pharmaceutical services by the person<sup>17</sup> whose application was granted subject to such conditions (or by a successor to that person who likewise provides local pharmaceutical services under that scheme)<sup>18</sup>.

1    le an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1): see PARA 354. As to the meaning of 'pharmaceutical list' see PARA 353.

2    As to the meaning of 'controlled locality' see PARA 377.

3    As to the meaning of 'doctor' see PARA 345 note 4.

4    As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

5    As to the meaning of 'general medical services contract' see PARA 242.

6    le arrangements under the National Health Service Act 2006 s 92: see PARA 267. As to primary medical services see PARA 241.

7    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(1)(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

8    As to the meaning of 'local pharmaceutical services' see PARA 359 note 6.

9    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(1)(b). As to primary care trusts see PARA 111.

10 le under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(2): see the text to notes 12-15.

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(1). This provision is expressed to be subject to reg 22(4) (see PARA 370), regs 25 and 26 (see PARAS 371, 372).

12 As to the meaning of 'chemist' see PARA 349 note 1.

13 'LPS chemist' means a registered pharmacist, a person lawfully conducting a retail pharmacy business in accordance with the Medicines Act 1968 s 69 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 909), or a supplier of appliances, who provides local pharmaceutical services under a pharmacy pilot scheme or an LPS scheme: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1) (definition amended by SI 2006/552). As to the meaning of 'registered pharmacist' see PARA 339 note 19. As to the meaning of 'appliance' see PARA 345 note 3. As to the meaning of 'pharmacy pilot scheme' see PARA 359 note 11. As to the meaning of 'LPS scheme' see PARA 359 note 6.

14 le under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(1): see the text to notes 1-11.

15 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(2).

16 le under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(18) (b) (see PARA 375), reg 32(10)(b) (see PARA 378) or reg 38(14)(b) (see PARA 383). As to the Secretary of State see PARA 6 note 8.

17 As to the meaning of 'person' see PARA 17 note 2.

18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(3) (amended by SI 2006/552).

## UPDATE

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

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### **367. Conditional inclusion relating to fitness to practise matters.**

Where a person<sup>1</sup> makes an application for admission to a pharmaceutical list<sup>2</sup>, a primary care trust may determine that, while he remains included in the pharmaceutical list, or while his preliminary consent has effect, he is to be subject<sup>3</sup> to the imposition of conditions<sup>4</sup>. A primary care trust may vary the terms of service in relation to an applicant for the purpose of, or in connection with, the imposition of those conditions<sup>5</sup>.

A primary care trust must notify the applicant, within seven days of the date of a decision to impose any conditions, of the conditions it intends to impose<sup>6</sup>. A primary care trust must require the applicant to notify it, within 28 days of the date of the notification, whether he agrees to the imposition of the conditions<sup>7</sup>, or whether he is appealing<sup>8</sup> against that imposition of conditions<sup>9</sup>. Where no notification is received from the applicant, the primary care trust must deem him to have withdrawn his application<sup>10</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 I.e. an application to a primary care trust: (1) under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(a) (see PARA 354), except an application in respect of which preliminary consent has previously been granted where the premises specified in the application have the same location as that in respect of which preliminary consent has previously been granted (reg 21(1)(a)); (2) under reg 40 (see PARA 385) or reg 54 (see PARA 399), where the applicant is not already included in that primary care trust's pharmaceutical list (reg 21(1)(b)); or (3) under reg 10 (see PARA 359) where the applicant meets the conditions specified in reg 10(7) (reg 21(1)(c)). As to primary care trusts see PARA 111. As to the meaning of 'pharmaceutical list' see PARA 353. As to preliminary consent see PARA 385.

3 I.e. having regard to the requirements in the National Health Service Act 2006 s 148 (see PARA 343): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(2); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(2). In the case of an application under reg 5(1)(b) or (c) (see PARA 354), where an applicant is subject to conditions imposed in accordance with reg 21, or reg 30 (see PARA 376), reg 42 (see PARA 368) or reg 43 (see PARA 369) a grant of his application must be subject to those same conditions: reg 21(10). As to the review of conditions see PARA 368. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(3). As to terms of service see PARA 347.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(4) (amended by SI 2006/3373). When the primary care trust notifies the applicant of any such decision, it must inform him that if he wishes to exercise a right of appeal he must do so within the period of 28 days beginning with the date on which it gave him the notice informing him of its decision, and must tell him how to make an appeal: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(5).

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(6)(a).

8 I.e. under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30: see PARA 376.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(6)(b). Where: (1) a primary care trust has granted an application for inclusion in its pharmaceutical list but imposed conditions on that grant (reg 21(7)(a)); and (2) the applicant is considering whether to appeal, or has notified the trust that he wishes to appeal, but wishes to be included in the pharmaceutical list during the period until the time for appeal

has expired or the appeal is decided (reg 21(7)(b)), the trust must include the applicant in its pharmaceutical list if it has received notification from him that he agrees to the imposition of the conditions during the period until the time for appeal has expired or the appeal is decided (reg 21(8)(a)), and the requirements of reg 39 (see PARA 384) are satisfied (reg 21(8)(b)).

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(9).

## **UPDATE**

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

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### **368. Review of decision to impose conditions.**

Where a primary care trust<sup>1</sup> has made a decision to impose conditions as to a person's<sup>2</sup> inclusion in the pharmaceutical list<sup>3</sup>, it may review such a decision, either of its own volition or at the request of the person<sup>4</sup> whose application has been granted subject to conditions<sup>5</sup>. A primary care trust must afford to the person whose application has been granted subject to conditions an opportunity to make written<sup>6</sup> representations to the trust or to put his case at an oral hearing before the trust, and it must take the representations into account, or hold the hearing, as the case may be, before reaching its decision upon review<sup>7</sup>.

Upon review, the primary care trust may vary the conditions, impose different conditions or, where the chemist<sup>8</sup> has breached a condition, remove him from its pharmaceutical list<sup>9</sup>. A primary care trust must inform the chemist of its decision upon review, the reasons for it (including any facts relied upon), and his right of appeal to the Family Health Services Appeal Authority<sup>10</sup>. After a review has taken place at his request, the person whose application has been granted subject to conditions cannot request another review before the expiry of six months from the date of the decision on the previous review<sup>11</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'person' see PARA 17 note 2.

3 In accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21: see PARA 367. As to the meaning of 'pharmaceutical list' see PARA 353.

4 A person whose application has been granted subject to conditions may not request a review of a primary care trust's decision until the expiry of a three month period beginning with the date the trust includes his name on its pharmaceutical list (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 42(2)(a)), or grants him preliminary consent (reg 42(2)(b)), as the case may be (reg 42(2)). As to the meaning of 'month' see PARA 28 note 16.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 42(1). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 As to the meaning of 'written' see PARA 7 note 2.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 42(3).

8 As to the meaning of 'chemist' see PARA 349 note 1.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 42(4).

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 42(5). As to appeals see PARA 369. As to the Family Health Services Appeal Authority see PARA 443.

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 42(6).

## **UPDATE**

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).



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### **369. Appeals following a review.**

A person<sup>1</sup> whose application has been granted subject to conditions<sup>2</sup> may appeal to the Family Health Services Appeal Authority<sup>3</sup> against any decision of the primary care trust<sup>4</sup> to vary a condition<sup>5</sup>, to vary his terms of service<sup>6</sup>, or on any review of an earlier such decision of the primary care trust<sup>7</sup>. The appeal is by way of redetermination of the primary care trust's decision<sup>8</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(2): see PARA 367.

3 As to the Family Health Services Appeal Authority see PARA 443.

4 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 42: see PARA 368. As to primary care trusts see PARA 111.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 43(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 43(b). As to terms of service see PARA 347.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 43(c).

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 43.

## **UPDATE**

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).



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### **370. Determination of applications.**

Subject to the following provisions and to the provisions relating to the deferral of the consideration of applications<sup>1</sup>, the primary care trust<sup>2</sup> may determine an application for admission to a pharmaceutical list<sup>3</sup> in such manner as it thinks fit and may, if it considers that oral representations are unnecessary, determine the application without hearing any oral representations<sup>4</sup>.

In considering any application from an applicant who is not already included in that primary care trust's pharmaceutical list<sup>5</sup>, a primary care trust must<sup>6</sup>: (1) ensure that it has sight of all relevant documents and check as far as reasonably practicable the information provided by the applicant<sup>7</sup>; (2) check with the NHS Business Services Authority<sup>8</sup> whether the applicant (and where the applicant is a body corporate, any director<sup>9</sup> or superintendent<sup>10</sup> of the applicant) has any record of fraud<sup>11</sup>; (3) check with the Secretary of State<sup>12</sup> as to any information held by him as to any record about past or current investigations or proceedings involving or related to the applicant (and where the applicant is a body corporate, any director or superintendent of the applicant)<sup>13</sup>; (4) take up and check the references provided by the applicant<sup>14</sup>; and (5) consider whether there are grounds for refusing<sup>15</sup> the application<sup>16</sup>, or for imposing<sup>17</sup> conditions<sup>18</sup>.

In any case where the primary care trust decides to hear oral representations, it must give the applicant and any person<sup>19</sup> from whom it has received representations<sup>20</sup> not less than 14 days notice of the time and place at which the oral representations are to be heard<sup>21</sup>. The applicant and any such person may be assisted at any such hearing in the presentation of his representations by some other person, but no person is entitled to be heard in the capacity of counsel or solicitor<sup>22</sup>. The procedure by which representations are heard is such as the primary care trust may determine<sup>23</sup>. The primary care trust may, where it thinks fit, consider two or more applications together in relation to each other<sup>24</sup>.

Certain persons are prohibited from taking part in any decision under these provisions<sup>25</sup>.

1    Ie to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 25 (see PARA 371) and reg 26 (see PARA 372).

2    As to primary care trusts see PARA 111.

3    As to the meaning of 'pharmaceutical list' see PARA 353.

4    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(1). As to the relevant procedures for dealing with certain applications see reg 22. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5    Ie except an applicant who has applied under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(c): see PARA 354.

6    This provision is expressed to be subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 25 (see PARA 371) and reg 26 (see PARA 372).

7    See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(2)(a) (amended by SI 2006/3373).

8    As to the NHS Business Services Authority see PARA 152.

- 9 As to the meaning of 'director' see PARA 365 note 3.
- 10 As to the meaning of 'superintendent' see PARA 365 note 4.
- 11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(2)(b) (amended by SI 2006/552).
- 12 As to the Secretary of State see PARA 6 note 8.
- 13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(2)(c).
- 14 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(2)(d).
- 15 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19: see PARA 365.
- 16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(2)(e)(i).
- 17 Ie in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21: see PARA 367.
- 18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(2)(e)(ii).
- 19 As to the meaning of 'person' see PARA 17 note 2.
- 20 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 23(2), (3): see PARAS 355, 356.
- 21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(3).
- 22 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(4).
- 23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(5).
- 24 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(7). This provision is expressed to be subject to reg 25 (see PARA 371) and reg 26 (see PARA 372).
- 25 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 24(6) (amended by SI 2006/552).

## UPDATE

### **354-370 Applications for inclusion in or amendment to a pharmaceutical list ... Determination of applications**

SI 2005/641 regs 5(1)(b)(i), (ii), 6, 7, 12, 22 do not apply to an application for a temporary amendment to a pharmaceutical list which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 7A(1) (reg 7A added by SI 2009/2205). For the meaning of 'emergency requiring the flexible provision of pharmaceutical services' see PARA 408. In the circumstances described in reg 7A(1), the primary care trust may make a temporary amendment to an entry in the pharmaceutical list, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the applicant's overridden entry in the pharmaceutical list before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 7A(2). There is no right of appeal under SI 2005/641 in respect of a decision to make or not to make, or to curtail the duration of, a temporary amendment to a pharmaceutical list made under reg 7A: reg 7A(3).

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### **371. Deferral of consideration of certain applications.**

A primary care trust<sup>1</sup> may defer consideration or determination of certain applications or notifications<sup>2</sup>; but, subject to any power to defer consideration on fitness to practise grounds<sup>3</sup>, may no longer do so when the specified designation<sup>4</sup> is cancelled, or varied in such a way that it no longer specifies or includes the premises in question<sup>5</sup>. A primary care trust must, as soon as is practicable, notify the applicant of a decision to defer consideration or determination of his application or notification, and send him a copy of the designation in question<sup>6</sup>.

1 As to primary care trusts see PARA 111.

2 Subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 25(2), the applications and notifications in question are: (1) an application under reg 5(1) (see PARA 354) (reg 25(1)(a)); (2) such an application where the applicant has previously been granted preliminary consent, but where reg 41(2) (see PARA 385) applies (reg 25(1)(b)); (3) an application for preliminary consent under reg 40 (see PARA 385) (reg 25(1)(c)); or (4) a notification under reg 39(8) (see PARA 384) (reg 25(1)(d)), relating to the provision of pharmaceutical services from premises or, in the case of a notification under head (4), the changed premises which are specified or described in a designation, or located within a neighbourhood specified in a designation (reg 25(1)). As to the meaning of 'pharmaceutical services' see PARA 345 note 5. The following applications or notifications are not covered by reg 25: (a) an application under reg 5(1) and to which reg 8, 9 or 10 (see PARAS 357-359) applies (reg 25(2)(a)); (b) an application under reg 5(1) where the applicant has previously been granted preliminary consent, and where all the conditions specified in reg 41(1) (see PARA 385) are satisfied (reg 25(2)(b)); (c) an application under reg 40 and to which, by virtue of reg 40(3), reg 8 or 9 applies (reg 25(2)(c)); (d) an application or notification in respect of which a determination by the primary care trust has been made, where that determination is the subject of an appeal under reg 29 (see PARA 375) or reg 38 (see PARA 383) (reg 25(2)(d)); or (e) an application or notification which was received by the primary care trust more than 30 days before the date of the designation mentioned in reg 25(1) (reg 25(2)(e)). 'Designation' means a designation made by a primary care trust under the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888, reg 3(1) (see PARA 425) or under the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4 (see PARA 433): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 25(5) (amended by SI 2006/552).

3 Ie any power contained in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26: see PARA 372.

4 Ie designation mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 25(1): see note 2.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 25(3). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 25(4). The designation is that mentioned in reg 25(1): see note 2.

### **UPDATE**

### **371 Deferral of consideration of certain applications**

NOTE 2--In head (e), for '30 days' read '120 days': SI 2005/641 reg 25(2)(e) (amended by SI 2009/599).

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### **372. Deferral of consideration of applications on fitness to practise grounds.**

A primary care trust<sup>1</sup> may defer consideration or determination of an application for admission to a pharmaceutical list<sup>2</sup>, or an application to return to such a list<sup>3</sup>, where any of the prescribed conditions are met<sup>4</sup>. A primary care trust must, as soon as is practicable, notify the applicant of a decision to defer consideration or determination of his application, and the reasons for this<sup>5</sup>.

Once the outcome of the relevant event mentioned in the prescribed conditions is known the primary care trust must notify the applicant that he must within 28 days of the date of the notification (or such longer period as it may agree)<sup>6</sup> update his application<sup>7</sup>, and confirm in writing<sup>8</sup> that he wishes to proceed with his application<sup>9</sup>. If the applicant fails to update his application or confirm that he wishes to proceed, the primary care trust must deem him to have withdrawn his application<sup>10</sup>. Provided any additional information has been received within the 28 days or the time agreed, the primary care trust must notify the applicant as soon as possible that his application to be included has been successful<sup>11</sup>; or that it has decided to refuse the application or decided to impose conditions on his inclusion, and the reasons for that (including any facts relied upon), and of any right<sup>12</sup> of appeal<sup>13</sup>.

1 As to primary care trusts see PARA 111.

2 I.e. an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5 (see PARA 354), reg 40 (see PARA 385) or reg 54 (see PARA 399). As to the meaning of 'pharmaceutical list' see PARA 353.

3 I.e. an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10 (see PARA 359) where the applicant meets the conditions specified in reg 10(7).

4 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26(1). As to the prescribed conditions see reg 26(1)(a)-(l) (reg 26(1)(h), (i) amended by SI 2006/552). Subject to any power to defer consideration or determination of an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 25 (see PARA 371), a primary care trust may only defer a decision under reg 26(1) until the outcome of the relevant event mentioned in the prescribed conditions is known: see reg 26(2). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26(3) (amended by SI 2006/3373).

6 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26(4). This provision is expressed to be subject to reg 25: see PARA 371.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26(4)(a).

8 As to the meaning of 'writing' see PARA 7 note 2.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26(4)(b).

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26(5).

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26(6)(a).

12 I.e. under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19(6) (see PARA 365), reg 29 (see PARA 375) and reg 30 (see PARA 376).

- 13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26(6)(b).

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### **373. Notification of decision.**

A primary care trust<sup>1</sup> must, as soon as practicable, and in any event within the period of four months<sup>2</sup> beginning with the date of receipt of the application unless the primary care trust has good cause to require a longer period, give notice of its decision<sup>3</sup> on an application for admission to a pharmaceutical list<sup>4</sup>, or of its decision whether or not to amend the premises named in the original application<sup>5</sup>, to the prescribed persons<sup>6</sup> and must include with the notice a statement of the reasons for the decision and of any rights<sup>7</sup> of appeal<sup>8</sup>.

1 As to primary care trusts see PARA 111.

2 In the case of an application that involves either a minor relocation within a primary care trust's area or between neighbouring primary care trusts that falls to be dealt with under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(3) (see PARA 355), or reg 7(3) (see PARA 356) as appropriate, or a change of ownership and falls to be dealt with under reg 8(1) (see PARA 357), for the period of four months there is substituted a period of 30 days: reg 27(2) (amended by SI 2006/3373). As to the meaning of 'month' see PARA 28 note 16.

3 'Decision' includes a decision to grant an application subject to conditions, where the applicant has agreed to the imposition of the conditions pursuant to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(6)(a) (see PARA 367): reg 27(4).

4 I.e an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1): see PARA 354.

5 I.e as mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(8): see PARA 384.

6 As to the prescribed persons see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 27(1)(za)-(b), (3) (reg 27(1)(za) added, (1)(a), (3) amended, by SI 2006/3373).

7 I.e arising under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29: see PARA 375.

8 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 27(1) (amended by SI 2006/3373). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

## **UPDATE**

### **373 Notification of decision**

NOTE 6--SI 2005/641 reg 27(3) further amended: SI 2009/2205.

NOTE 8--SI 2005/641 reg 27(1) further amended: SI 2008/528.



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### **374. Notifications by primary care trusts to other persons.**

Where a primary care trust<sup>1</sup> refuses on fitness to practise grounds<sup>2</sup> to grant an application for admission to a pharmaceutical list<sup>3</sup>, or imposes conditions<sup>4</sup>, it must notify within seven days of that decision the specified persons<sup>5</sup> and bodies<sup>6</sup> of the prescribed matters<sup>7</sup>. The primary care trust must additionally notify certain other persons or bodies if so requested by them<sup>8</sup>. Where the primary care trust has so notified any of those persons or bodies<sup>9</sup>, it may in addition, if so requested by that person or body, notify that person or body of any evidence that was considered, including representations made by the pharmaceutical practitioner<sup>10</sup>. The primary care trust must send to the pharmaceutical practitioner concerned a copy of any information about him provided to those persons or bodies<sup>11</sup> and any correspondence with those persons or bodies relating to that information<sup>12</sup>. Where a decision is changed on review or appeal, or a suspension lapses, the primary care trust must notify any person or body that was notified of the original decision of the later decision, or of the fact that the suspension has lapsed<sup>13</sup>.

1 As to primary care trusts see PARA 111.

2 le on grounds specified in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19: see PARA 365.

3 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(1)(a). As to the meaning of 'pharmaceutical list' see PARA 353. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(1)(b). The conditions referred to are any imposed under reg 21 (see PARA 367), reg 30 (see PARA 376), reg 42 (see PARA 368) or reg 43 (see PARA 369).

5 As to the meaning of 'person' see PARA 17 note 2.

6 The specified persons and bodies are: (1) the Secretary of State (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(2)(a)); (2) any primary care trust or equivalent body that has on any of its lists or equivalent lists (a) the pharmaceutical practitioner (reg 28(2)(b)(i)); or (b) a body corporate of which the pharmaceutical practitioner is a director or superintendent, or any primary care trust or equivalent body that is considering an application for inclusion in, or for preliminary consent to be included in, any of its lists or equivalent lists from such a practitioner, director, superintendent or body corporate (reg 28(2)(b)(ii)); (3) the Scottish Executive (reg 28(2)(c)); (4) the Welsh Ministers (reg 28(2)(d); Government of Wales Act 2006 Sch 11 para 32); (5) the Northern Ireland Executive (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(2)(e)); (6) the Royal Pharmaceutical Society of Great Britain, the Pharmaceutical Society of Northern Ireland or any other appropriate regulatory body (reg 28(2)(f)); (7) the local pharmaceutical committee for the primary care trust's area (reg 28(2)(g)); (8) the National Patient Safety Agency (reg 28(2)(h)); and (9) where it is a fraud case, the NHS Business Services Authority (reg 28(2)(i) (amended by SI 2006/552)). As to the Secretary of State see PARA 6 note 8. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. 'Pharmaceutical practitioner' means the applicant or chemist in relation to whom the decision has been taken: see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(1). As to the meaning of 'chemist' see PARA 349 note 1. As to the meaning of 'director' see PARA 365 note 3. As to the meaning of 'superintendent' see PARA 365 note 4. As to the Scottish Executive and the Northern Ireland Executive see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Royal Pharmaceutical Society of Great Britain see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 881 et seq. As to local pharmaceutical committees see PARA 351. As to the National Patient Safety Agency see PARA 150. As to the NHS Business Services Authority see PARA 152.

7 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(1) (amended by SI 2005/1501). As to the prescribed matters see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(4) (amended by SI 2006/3373).

8 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(1). The other persons or bodies are: (1) persons or bodies that can establish that they (a) are or were employing the pharmaceutical practitioner, are using or have used his services (or where the pharmaceutical practitioner is a body corporate, any director or superintendent of that practitioner) in a professional capacity (reg 28(3)(a)(i)); or (b) are considering employing or using the services of the pharmaceutical practitioner (or where the pharmaceutical practitioner is a body corporate, any director or superintendent of that practitioner) in a professional capacity (reg 28(3)(a)(ii)); and (2) a partnership any of whose members provide or assist in the provision of pharmaceutical services and can establish that the pharmaceutical practitioner is or was a member of the partnership, or that it is considering inviting him to become such a member (reg 28(3)(b)).

9 Ie the persons or bodies specified in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(2), (3): see notes 6, 8.

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(6). Where a primary care trust is notified by the Family Health Services Appeal Authority that it has imposed a national disqualification on a pharmaceutical practitioner whom the primary care trust has removed from its list, it must notify the persons or bodies specified in heads (2), (7), (8), and (9) in note 6 and those specified in note 8: reg 28(7). As to the Family Health Services Appeal Authority see PARA 443. As to national disqualification see PARA 402.

11 Ie the persons or bodies specified in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(2), (3): see notes 6, 8.

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(5).

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(8).

## **UPDATE**

### **374 Notifications by primary care trusts to other persons**

NOTE 7--SI 2005/641 reg 28(4) further amended: SI 2009/2205.

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### **375. Appeals.**

Where a primary care trust<sup>1</sup>:

- 236 (1) has determined an application in respect of a minor relocation of premises<sup>2</sup> the persons<sup>3</sup> who may appeal to the Secretary of State<sup>4</sup> are the applicant<sup>5</sup>, and any person who was given notice<sup>6</sup> of the application<sup>7</sup> and made representations to the primary care trust<sup>8</sup>;
- 237 (2) has determined an application in respect of a minor relocation of less than 500 metres<sup>9</sup>, a change of ownership<sup>10</sup>, suspension from a list<sup>11</sup>, or a right of return to a list<sup>12</sup>; or made a decision<sup>13</sup> whether or not to amend the premises named in the original application<sup>14</sup>; the applicant and any person who has been notified of the decision<sup>15</sup> may appeal to the Secretary of State<sup>16</sup>;
- 238 (3) has determined an application to which the necessary or desirable test applied<sup>17</sup>, or would apply but for an exemption<sup>18</sup>, the persons who may appeal to the Secretary of State are the applicant<sup>19</sup> and, with certain exceptions<sup>20</sup>, any person who was given notice of the application and made representations to the primary care trust<sup>21</sup>;
- 239 (4) refuses to allow an extension to the period within which an applicant is to notify the primary care trust that he will commence provision of the services<sup>22</sup>, the applicant may appeal to the Secretary of State<sup>23</sup>;
- 240 (5) has notified an applicant that he is required to commence provision of the services<sup>24</sup>, the applicant may appeal to the Secretary of State<sup>25</sup>.

Any such appeal<sup>26</sup> must be made by sending to the Secretary of State a notice of appeal in writing<sup>27</sup> within 30 days<sup>28</sup> from the date on which the primary care trust sent its decision to the appellant<sup>29</sup>. If the Secretary of State, after considering the notice of appeal, is of the opinion that it discloses no reasonable grounds of appeal, or that the appeal is otherwise vexatious or frivolous, he may determine the appeal by dismissing it<sup>30</sup>. Otherwise, the Secretary of State must send a copy of the notice of appeal to the primary care trust whose determination is appealed against<sup>31</sup>, and in certain cases other prescribed persons<sup>32</sup>. Any person to whom a copy of the notice of appeal is sent may, within 30 days from the date on which the notice was sent to him, make representations in writing to the Secretary of State on the appeal<sup>33</sup>.

The Secretary of State may require an oral hearing before he determines the appeal<sup>34</sup>; and where he does so, must appoint one or more persons to hear the appeal and to report to him on it<sup>35</sup>. The appellant and any person to whom a notice of the hearing is sent may attend the hearing and be heard in person or by counsel, solicitor or other representative, and the primary care trust may be represented at the hearing by any duly authorised officer or member, or by counsel or solicitor<sup>36</sup>. On determining an appeal, the Secretary of State: (a) must allow the appeal<sup>37</sup>; (b) may, in a case where the primary care trust, on determining the application, considered the question whether to impose conditions to postpone the making or termination of arrangements<sup>38</sup> for the provision by a doctor or contractor of pharmaceutical services<sup>39</sup> or dispensing services, himself impose conditions to postpone for such period as he thinks fit, the making or termination of such arrangements<sup>40</sup>; (c) must, in a case where that question was not considered by the primary care trust when it determined the application, remit the question to the trust for determination<sup>41</sup>; (d) must confirm the decision of the primary care trust<sup>42</sup>; or (e)

where head (5) above applies, must specify a date for the commencement of pharmaceutical services by the appellant<sup>43</sup>. The Secretary of State must, as soon as practicable, send to the appellant and to any person to whom a copy of the notice of appeal was sent and who made representations, notice of his decision on the appeal and must include in the notice a statement of his reasons for the decision and of his findings of fact<sup>44</sup>.

1 As to primary care trusts see PARA 111.

2 Ie an application to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(1) (see PARA 355) or reg 7(1) (see PARA 356) applied.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the Secretary of State see PARA 6 note 8.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(1A)(a) (reg 29(1A) added by SI 2006/3373). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 23(2) (c), (d) or reg 23(3)(c), (d): see PARAS 355, 356.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(1A)(b)(i) (as added: see note 5).

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(1A)(b)(ii) (as added: see note 5).

9 Ie an application to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(3) (see PARA 355) or reg 7(3) (see PARA 356) applied.

10 Ie an application to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 8 (see PARA 357) applied.

11 Ie an application to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 9 (see PARA 358) applied.

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(2)(a) (amended by SI 2006/3373). An application in respect of a right to return to a list is one to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10 (see PARA 359) applied.

13 Ie as mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(8): see PARA 384.

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(2)(b).

15 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 27(1) (a)(ii), (iii) or reg 27(3)(c), (d): see PARA 373.

16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(2).

17 Ie to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12 (see PARA 361) applied.

18 Ie an exemption under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13: see PARA 362.

19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(3)(a).

20 Ie except in the case of an application to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(1) applies: see PARA 362.

21 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(3)(b).

22 Ie as mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(2): see PARA 384.

- 23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(4).
- 24 Ie as mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(3): see PARA 384.
- 25 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(5).
- 26 The National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29 does not apply to any right of appeal specified in reg 6(5) (see PARA 355), reg 7(5) (see PARA 356), reg 19(6) (see PARA 365) or reg 30 (see PARA 376): reg 29(1).
- 27 As to the meaning of 'writing' see PARA 7 note 2.
- 28 Or in the case of an appeal against a determination to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 6, 7, 8, 9 and 10 (see PARAS 355-359) applied, or a decision pursuant to reg 39(8) (see PARA 384), such longer period as the Secretary of State may for reasonable cause allow: reg 29(6)(b).
- 29 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(6)(a). Any notice of appeal must contain a concise statement of the grounds of appeal: reg 29(9). Where in determining an application, a primary care trust has, pursuant to reg 24(7) (see PARA 370), considered that application together with one or more other applications, any of the applicants and any of the persons mentioned in head (1), (2) or (3) in the text may appeal against the determination of any of the applications, and where the Secretary of State receives appeals against two or more of the determinations, those appeals must be considered together: reg 29(7) (amended by SI 2006/3373). The Secretary of State may consider together two or more appeals against a primary care trust provided that those appeals relate to an application within the same neighbourhood which fell to be granted under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(1) (see PARA 355), reg 7(1) (see PARA 356) or reg 8(1) (see PARA 357): reg 29(8).
- 30 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(10).
- 31 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(11).
- 32 As to the prescribed persons see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(11)(za)-(c) (reg 29(11)(za) added by SI 2006/3373).
- 33 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(12).
- 34 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(13).
- 35 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(14). The procedure of any oral hearing is determined by the person or persons hearing the appeal: reg 29(15). An oral hearing must take place at such time and place as the Secretary of State may direct, and notice of the hearing must be sent, not less than 14 days before the date fixed for the hearing, to the appellant and to any person to whom a copy of the notice of appeal was sent under reg 29(11) (see the text to notes 31-32): reg 29(16).
- 36 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(17).
- 37 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(18)(a).
- 38 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60: see PARA 404.
- 39 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.
- 40 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(18)(b).
- 41 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(18)(c).
- 42 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(18)(d).
- 43 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(18)(e).
- 44 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(19) (amended by SI 2006/3373).



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### **376. Appeals against imposition of conditions and related decisions.**

An applicant for admission to a pharmaceutical list<sup>1</sup> (or a person<sup>2</sup> whose application has been granted subject to conditions, as the case may be) may appeal to the Family Health Services Appeal Authority<sup>3</sup> against any decision of the primary care trust<sup>4</sup> to impose conditions, or any particular condition, on him<sup>5</sup>; and the appeal is by way of redetermination of the primary care trust's decision<sup>6</sup>. Such an appeal must be made within 28 days of the notification of the decision being appealed against<sup>7</sup>.

On appeal the Family Health Services Appeal Authority may make any decision which the primary care trust could have made, and must notify the appellant and the trust in writing<sup>8</sup> as soon as is practicable of the decision<sup>9</sup>. Where the decision of the Family Health Services Appeal Authority on appeal is that conditions be imposed on the appellant, whether or not those conditions are identical with the conditions imposed by the primary care trust, the trust must require the appellant to notify it, within 28 days of the date of the notification to him of the authority's decision, as to whether he agrees to the imposition of the conditions<sup>10</sup>. Where no such notification is received from the appellant, or the appellant notifies the primary care trust that he does not agree to the imposition of the conditions, the trust must deem him to have withdrawn his application and must remove his name from its pharmaceutical list if<sup>11</sup> his name was included<sup>12</sup>.

Any decision of the primary care trust that may be the subject of an appeal under these provisions does not have effect until the Family Health Services Appeal Authority has determined any appeal against it or any time for appeal has expired<sup>13</sup>.

1 As to the meaning of 'pharmaceutical list' see PARA 353.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to the Family Health Services Appeal Authority see PARA 443.

4 As to primary care trusts see PARA 111.

5 Ie in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(2): see PARA 367.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30(1). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30(2).

8 As to the meaning of 'writing' see PARA 7 note 2.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30(3).

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30(4).

11 Ie pursuant to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(8): see PARA 367.

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30(5).

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30(6). This provision is expressed to be subject to reg 21(8): see PARA 367.

## **UPDATE**

### **376 Appeals against imposition of conditions and related decisions**

NOTE 9--SI 2005/641 reg 30(3) amended: SI 2010/914.



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### **377. Determination that an area is a controlled locality.**

A primary care trust<sup>1</sup> may at any time consider and determine whether or not an area is rural in character<sup>2</sup>. An area which the primary care trust, or on appeal the Secretary of State<sup>3</sup>, has determined is rural in character is known as a 'controlled locality'<sup>4</sup>.

A local medical committee<sup>5</sup> or a local pharmaceutical committee<sup>6</sup> may at any time apply in writing<sup>7</sup> to a primary care trust to consider and determine whether or not an area specified in the application is rural in character<sup>8</sup>. On receiving such an application, the primary care trust must<sup>9</sup> consider and determine whether or not the area specified in the application or any part of such area, is rural in character<sup>10</sup>.

The primary care trust must, before making a determination under these provisions<sup>11</sup>, give notice in writing to the local medical committee, the local pharmaceutical committee and any provider of primary medical services or chemist<sup>12</sup>, or LPS chemist<sup>13</sup> who, in the opinion of the primary care trust, may be affected by the determination, and inform them that they may make representations in writing within 30 days from the date on which the notice was sent<sup>14</sup>. Where the primary care trust determines that any area or part of an area is or is not rural in character, it must consider whether the provision of primary medical services by any provider of primary medical services (except itself), or pharmaceutical services<sup>15</sup> by any chemist (other than a distance selling chemist<sup>16</sup>), or local pharmaceutical services<sup>17</sup> by any LPS chemist, is likely to be adversely affected in consequence of that determination<sup>18</sup>. The primary care trust must determine the boundaries of any area, or part of an area, referred to in the application which it determines to be rural in character<sup>19</sup>, and must delineate precisely the boundaries of any controlled locality on a map, and publish the map<sup>20</sup>. The primary care trust must, upon any determination by it, give to the specified persons<sup>21</sup> notice of its determination and of the reasons for it, and inform them that they may appeal<sup>22</sup> to the Secretary of State<sup>23</sup>.

1 As to primary care trusts see PARA 111.

2 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(2). This provision is expressed to be subject to reg 31(10): see note 11. The provisions of reg 31(7) (see the text to notes 19-20), (8) and (9)(b), (c) (see note 10) apply as they apply to an application under reg 31(3) (see the text to notes 5-8): reg 31(2) (amended by SI 2005/1501). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

3 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32: see PARA 378. As to the Secretary of State see PARA 6 note 8.

4 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 2(1), 31(7) (a). Where, before 1 April 2005 (ie the date of the coming into force of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641), an area was a controlled locality for the purposes of the National Health Service (Pharmaceutical Services) Regulations 1992, SI 1992/662, subject to the provisions of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31, that area continues to be a controlled locality: reg 31(1).

5 As to local medical committees see PARA 272.

6 As to local pharmaceutical committees see PARA 351.

7 As to the meaning of 'writing' see PARA 7 note 2.

- 8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(3).
- 9 le subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(10): see note 11.
- 10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(4). Any area forming part of an area referred to in an application which is determined not to be rural in character is not or, as the case may require, ceases to be, a controlled locality: reg 31(8). The primary care trust must not in consequence of a determination under reg 31(4): (1) include any particulars in a pharmaceutical list (reg 31(9)(a)); (2) give notice to a doctor pursuant to reg 60(7) (see PARA 404) (reg 31(9)(b)); (3) give notice to a contractor providing primary medical services (see reg 31(9)(c)); or (4) determine an application under reg 36 (see PARA 381) (reg 31(9)(d)), during the period for bringing an appeal or pending the determination of any such appeal (reg 31(9)). As to the meaning of 'pharmaceutical list' see PARA 353. As to the meaning of 'doctor' see PARA 345 note 4. As to primary medical services see PARA 241.
- 11 le under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31. Where the question whether or not an area is rural in character has been determined by a primary care trust under reg 31 (reg 31(10)(a)), or on appeal under reg 32 (see PARA 378) (reg 31(10)(b)), such a question may be considered by a primary care trust during the period referred to in reg 31(10) only where it is satisfied, whether on an application under reg 31(3) (see the text to notes 5-8) or otherwise, that there has been a substantial change in circumstances in relation to the area in question, or the relevant part of it, since the question was last determined (reg 31(11)).
- 12 As to the meaning of 'chemist' see PARA 349 note 1.
- 13 As to the meaning of 'LPS chemist' see PARA 366 note 13.
- 14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(5).
- 15 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.
- 16 As to the meaning of 'distance selling chemist' see PARA 361 note 20.
- 17 As to the meaning of 'local pharmaceutical services' see PARA 359 note 6.
- 18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(6).
- 19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(7).
- 20 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(7)(b).
- 21 The specified persons are those mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(5): see the text to notes 11-14.
- 22 le in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32: see PARA 378.
- 23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(12) (amended by SI 2006/3373).

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### **378. Appeals relating to rurality of an area.**

Where a primary care trust<sup>1</sup> has: (1) determined<sup>2</sup> that an area is, or is not, rural in character<sup>3</sup>; (2) has refused<sup>4</sup> to consider that question<sup>5</sup>; or (3) has determined<sup>6</sup> that it should, or should not, postpone the making or termination of arrangements for the provision of services<sup>7</sup>, the local medical committee<sup>8</sup>, the local pharmaceutical committee<sup>9</sup> or a provider of primary medical services<sup>10</sup>, chemist<sup>11</sup> or LPS chemist<sup>12</sup> who is required<sup>13</sup> to be given notice by the primary care trust may appeal to the Secretary of State<sup>14</sup> against any such determination or, as the case may be, refusal, by giving notice of appeal<sup>15</sup>.

The Secretary of State must, on receipt of any notice of appeal, send copies thereof to the primary care trust and to all the persons to whom it has given notice<sup>16</sup> of its determination<sup>17</sup>. The primary care trust and the persons to whom the notice of appeal was sent may, within 30 days from the date on which the Secretary of State sent copies to them of the notice of appeal, make representations in writing<sup>18</sup> to him on the appeal<sup>19</sup>. The Secretary of State may require an oral hearing before he determines an appeal<sup>20</sup>; and where he so requires must appoint one or more persons to hear the appeal and to report to him on it<sup>21</sup>. The appellant and any person to whom a notice of the hearing is sent may attend the hearing and be heard in person or by counsel, solicitor or other representative, and the primary care trust may be represented at the hearing by any duly authorised officer or member, or by counsel or solicitor<sup>22</sup>.

On determining an appeal, the Secretary of State: (a) must, where he allows an appeal against a refusal mentioned in head (2) above, also determine the question whether or not the relevant area is rural in character<sup>23</sup>; (b) may, in a case where the primary care trust, on determining the application, considered the question whether to postpone the making or termination of arrangements for the provision of services, himself postpone, for such a period as he thinks fit, the making or termination of such arrangements<sup>24</sup>; (c) must in a case where that question was not considered by the primary care trust when it determined the application, remit the question to the trust for determination<sup>25</sup>. The Secretary of State must, upon the determination by him of an appeal, give notice of the decision, together with his reasons for it, to all the persons to whom the notice of appeal was sent<sup>26</sup>.

1 As to primary care trusts see PARA 111.

2 I.e. pursuant to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31: see PARA 377.

3 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(1)(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4 I.e. on the ground that it is not satisfied as mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(11): see PARA 377.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(1)(b).

6 I.e. as mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(2): see PARA 366.

7 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(1)(c).

- 8 As to local medical committees see PARA 272.
- 9 As to local pharmaceutical committees see PARA 351.
- 10 As to primary medical services see PARA 241.
- 11 As to the meaning of 'chemist' see PARA 349 note 1.
- 12 As to the meaning of 'LPS chemist' see PARA 366 note 13.
- 13 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(5): see PARA 377.
- 14 As to the Secretary of State see PARA 6 note 8.
- 15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(1). Any notice of appeal must be sent to the Secretary of State, within 30 days of the date on which the decision of the primary care trust was sent to the person making the appeal, and must contain a concise statement of the grounds of appeal: reg 32(2). As to the meaning of 'person' see PARA 17 note 2.
- 16 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 31(12): see PARA 377.
- 17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(3).
- 18 As to the meaning of 'writing' see PARA 7 note 2.
- 19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(4).
- 20 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(5).
- 21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(6). The procedure at any oral hearing is determined by the person or persons hearing the appeal: reg 32(7). An oral hearing takes place at such time and place as the Secretary of State may direct, and notice of the hearing must be sent, not less than 14 days before the date fixed for the hearing, to the appellant and to any person to whom a copy of the notice of appeal was sent under reg 32(3) (see the text to notes 16-17): reg 32(8).
- 22 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(9).
- 23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(10)(a).
- 24 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(10)(b).
- 25 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(10)(c).
- 26 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 32(11) (amended by SI 2006/3373).

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### **379. Pharmaceutical services in reserved locations.**

Subject to certain exceptions<sup>1</sup>, the primary care trust<sup>2</sup> must, when the period for representations has expired<sup>3</sup> determine<sup>4</sup> whether the premises, or relevant location<sup>5</sup>, from which the applicant wishes to provide pharmaceutical services, at the date of the receipt of the application by the primary care trust, are in a reserved location<sup>6</sup>.

Where it has been determined by the primary care trust or on appeal by the Secretary of State<sup>7</sup>, in relation to premises, or a relevant location, from which pharmaceutical services are to be, or are being, provided, that those premises are in a reserved location, the chemist<sup>8</sup> in relation to those premises, or that relevant location, may make an application in writing for the trust to make a further determination as to whether, on the date the request is made, that is, the date stated on it, those premises are, or that the relevant location is, in a reserved location<sup>9</sup>. Where, in making such a further determination the primary care trust would determine that those premises are, or that relevant location is, not in a reserved location, or there is an appeal against a determination by the trust and it is determined on the appeal that premises are not, or that relevant location is not, in a reserved location: (1) the trust must determine that the premises are, or the relevant location is, to be treated for these purposes as if they were in a reserved location, where it is of the opinion that not to do so would prejudice the proper provision of primary medical services<sup>10</sup> (other than those provided by the trust itself), dispensing services or pharmaceutical services in any locality<sup>11</sup>; or (2) if the trust considers that the provision of primary medical services by a provider of primary medical services (other than one employed by the trust), or pharmaceutical services by any chemist, is likely to be adversely affected by a determination that the premises are not in a reserved location, it must make such a determination but may impose conditions to postpone, for such period as it thinks fit, the making or termination of arrangements<sup>12</sup> for the provision by a doctor<sup>13</sup> or a contractor of pharmaceutical services or dispensing services to patients<sup>14</sup>.

Where there is an appeal against a determination made by the primary care trust that premises are, or a relevant location is, in a reserved location<sup>15</sup>, and it is determined by the appeal that the premises are not, or relevant location is not, in a reserved location<sup>16</sup>, the trust must redetermine the application<sup>17</sup>.

The primary care trust must delineate precisely the boundaries of any reserved location it has determined<sup>18</sup> on a map, and must publish the map<sup>19</sup>.

1 As to the exceptions see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 34. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

2 As to primary care trusts see PARA 111.

3 As to the period for representations see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 33.

4 Such a determination must be made in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35, and with regs 34, 36 and 37 (see PARAS 381, 382): reg 35(7) (a).

5 'Relevant location' means, where the location of the premises from which the pharmaceutical services are to be provided is specified in writing by the applicant before the primary care trust make its determination, that

location, and where that location is not so specified, the best estimate the trust is able to make of where those premises may be: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(2) (b). As to the meaning of 'pharmaceutical services' see PARA 345 note 5. As to the meaning of 'writing' see PARA 7 note 2.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(1). Subject to reg 35(3), 'reserved location' means that the number of individuals on all of the patient lists for the area which is within 1.6 kilometres of the premises, or from the relevant location, as the case may be, is less than 2750: reg 35(2)(a). Premises, or a relevant location, are not in a reserved location where the primary care trust considers that there are circumstances, including but not limited to the age or degree of infirmity of the individuals referred to in reg 35(2), why the extent of use of pharmaceutical services if a pharmacy were to operate from the premises or from the relevant location would be similar to or greater than might be expected if the number of individuals mentioned in reg 35(2)(a) were 2750 or more: reg 35(3) (amended by SI 2005/1501). Before reaching its opinion under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(3) the primary care trust must invite and consider representations as to whether reg 35(3) may apply from those persons mentioned in reg 33(2) (see note 3): reg 35(4). As to the meaning of 'patient list' see PARA 362 note 9. 'Pharmacy' means any premises where drugs are provided by a pharmacist: (1) as part of pharmaceutical services under the National Health Service Act 2006 s 126 (arrangements for pharmaceutical services: see PARA 339); (2) in accordance with a pharmacy pilot scheme where the range of local pharmaceutical services provided under that scheme is the same or comparable to the range of pharmaceutical services provided by a pharmacy falling within head (1), and where the local pharmaceutical services provided under that scheme are provided at the same or similar hours as pharmaceutical services provided by a pharmacy falling within that head; or (3) in accordance with an LPS scheme: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1) (definition amended by SI 2006/552); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'drugs' see PARA 353 note 7. As to the meaning of 'pharmacist' see PARA 345 note 3. As to the meaning of 'pharmacy pilot scheme' see PARA 359 note 11. As to the meaning of 'local pharmaceutical services' see PARA 359 note 6. As to the meaning of 'LPS scheme' see PARA 359 note 6.

7 As to the Secretary of State see PARA 6 note 8. As to appeals see PARA 383.

8 As to the meaning of 'chemist' see PARA 349 note 1.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(5). Such further determination must be made in accordance with reg 35 and regs 33, 34, 36 and 37 (see PARAS 381, 382): reg 35(7)(b).

10 As to primary medical services see PARA 241.

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(6)(a).

12 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60: see PARA 404.

13 As to the meaning of 'doctor' see PARA 345 note 4.

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(6)(b).

15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(8)(a).

16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(8)(b).

17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(8).

18 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(1) or (5): see the text to notes 1-9.

19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35(9).

## **UPDATE**

### **379 Pharmaceutical services in reserved locations**

NOTE 3--SI 2005/641 reg 33 amended: SI 2008/528, SI 2009/2205.

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**380. Refusal: premises in a controlled locality but not in a reserved location.**

Where:

- 241 (1) the application is made by a registered pharmacist<sup>1</sup>, a person lawfully conducting a retail pharmacy business<sup>2</sup>, or a supplier of appliances<sup>3</sup>, in respect of premises in a controlled locality<sup>4</sup>; and
- 242 (2) either the primary care trust<sup>5</sup> has determined<sup>6</sup>, or on appeal it is determined<sup>7</sup>, that the premises from which the applicant wishes to provide pharmaceutical services<sup>8</sup> are not in a reserved location<sup>9</sup>,

the primary care trust<sup>10</sup>: (a) must refuse an application to the extent that it is of the opinion that to grant it would prejudice the proper provision of primary medical services<sup>11</sup>, dispensing services, local pharmaceutical services<sup>12</sup> or pharmaceutical services in any locality<sup>13</sup>; and (b) may refuse an application in a case where two or more determinations fall to be made which relate to each other<sup>14</sup> (notwithstanding that it would, if determining that application in isolation, grant it) where the number of applications is such, or the circumstances in which they are made are such, that to grant all of them or more than one of them would prejudice the proper provision of primary medical services, dispensing services, local pharmaceutical services or pharmaceutical services in any locality<sup>15</sup>.

1 As to the meaning of 'registered pharmacist' see PARA 339 note 19.

2 Ie in accordance with the Medicines Act 1968 s 69: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 909.

3 As to the meaning of 'appliance' see PARA 345 note 3.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18ZA(1)(a) (reg 18ZA added by SI 2005/1501). As to the meaning of 'controlled locality' see PARA 377. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35: see PARA 379. As to primary care trusts see PARA 111.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18ZA(1)(b)(i) (as added: see note 4).

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18ZA(1)(b)(ii) (as added: see note 4). As to appeals see PARA 383.

8 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18ZA(1) (as added: see note 4).

10 Ie subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 25 and 26: see PARAS 371, 372.

11 As to primary medical services see PARA 241.

12 As to the meaning of 'local pharmaceutical services' see PARA 359 note 6.

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18ZA(2)(a) (as added: see note 4).

14 In a case to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(9) applies: see PARA 381.

15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18ZA(2)(b) (as added: see note 4).



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### **381. Determination of applications in respect of controlled localities.**

The primary care trust<sup>1</sup> may make a determination in such manner as it thinks fit and may, if it considers that oral representations are unnecessary, make the determination without hearing any oral representations<sup>2</sup>. When determining an application, the primary care trust must consider whether the provision of primary medical services<sup>3</sup> by any provider of such services (except itself) or pharmaceutical services<sup>4</sup> by any chemist<sup>5</sup> or local pharmaceutical services<sup>6</sup> by any LPS chemist<sup>7</sup> is likely to be adversely affected in consequence of that grant, and whether<sup>8</sup> any conditions should be imposed<sup>9</sup>. In considering any application<sup>10</sup> from an applicant who is not already included in that primary care trust's pharmaceutical list<sup>11</sup>, a primary care trust must<sup>12</sup>: (1) ensure that it has sight of all relevant documents and check as far as practicable the information provided by the applicant<sup>13</sup>; (2) check with the NHS Business Services Authority<sup>14</sup> whether the applicant (and where the applicant is a body corporate, any director<sup>15</sup> or superintendent<sup>16</sup> of the applicant) has any record of fraud<sup>17</sup>; (3) check with the Secretary of State<sup>18</sup> as to any information held by him as to any record about past or current investigations or proceedings involving or related to the applicant (and where the applicant is a body corporate, any director or superintendent of the applicant)<sup>19</sup>; (4) take up and check any references provided by the applicant<sup>20</sup>; and (5) consider whether there are grounds for refusing<sup>21</sup> the application<sup>22</sup>, or for imposing conditions<sup>23</sup>.

In any case where the primary care trust decides to hear oral representations, it must give the applicant and any person<sup>24</sup> from whom it has received representations<sup>25</sup> not less than 14 days notice of the time and place at which the representations are to be heard<sup>26</sup>. The primary care trust may invite any other person to give oral evidence as it thinks fit<sup>27</sup>. The procedure by which representations are heard is such as the primary care trust may determine<sup>28</sup>. Certain persons are prohibited from taking part in any decision under these provisions<sup>29</sup>.

The primary care trust may, where it thinks fit, where two or more determinations fall to be made which relate to each other, make those determinations together, and, where it proposes to do so, it must so inform the applicants and the persons to whom<sup>30</sup> copies of the applications were sent<sup>31</sup>.

1 As to primary care trusts see PARA 111.

2 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(1). This provision is stated to be subject to reg 18ZA (see PARA 380), and regs 25 and 26 (see PARAS 371, 372): reg 36(1) (amended by SI 2006/3373). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

3 As to primary medical services see PARA 241.

4 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

5 As to the meaning of 'chemist' see PARA 349 note 1.

6 As to the meaning of 'local pharmaceutical services' see PARA 359 note 6.

7 As to the meaning of 'LPS chemist' see PARA 366 note 13.

8 In accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(2): see PARA 366.

- 9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(2).
- 10 Ie any application made under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5: see PARA 354.
- 11 As to the meaning of 'pharmaceutical list' see PARA 353.
- 12 Ie subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 25 and 26: see PARAS 371, 372.
- 13 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(3)(a) (amended by SI 2006/3373).
- 14 As to the NHS Business Services Authority see PARA 152.
- 15 As to the meaning of 'director' see PARA 365 note 3.
- 16 As to the meaning of 'superintendent' see PARA 365 note 4.
- 17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(3)(b).
- 18 As to the Secretary of State see PARA 6 note 8.
- 19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(3)(c).
- 20 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(3)(d).
- 21 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 19: see PARA 365.
- 22 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(3)(e)(i).
- 23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(3)(e)(ii). The conditions referred to are such as may be imposed in accordance with reg 21: see PARA 367.
- 24 As to the meaning of 'person' see PARA 17 note 2.
- 25 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 33(4) or (5): see PARA 379.
- 26 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(4). The applicant and any such person may be assisted at any such hearing in the presentation of his representations by some other person, but no person is entitled to be heard in the capacity of counsel or solicitor: reg 36(6).
- 27 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(5).
- 28 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(7).
- 29 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(8). As to the persons concerned see reg 36(8)(a)-(h) (reg 36(8)(f), (h) amended by SI 2006/552).
- 30 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 33: see PARA 379.
- 31 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(9). This provision is expressed to be subject to regs 25 and 26: see PARAS 371, 372.

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### **382. Notification of decision in respect of applications in controlled localities.**

The primary care trust<sup>1</sup> must, as soon as practicable after making the determination<sup>2</sup> and in any event within four months<sup>3</sup> beginning with the date of receipt of the application unless the trust has good cause to require a longer period, give to the prescribed persons notice<sup>4</sup> of its decision and the reasons for that decision<sup>5</sup>, and of the rights<sup>6</sup> of appeal<sup>7</sup>.

1 As to primary care trusts see PARA 111.

2 'Making the determination' includes granting an application subject to conditions, where the applicant has agreed to the imposition of the conditions pursuant to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21(6)(a) (see PARA 367); reg 37(4). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

3 In the case of an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(3) (see PARA 355), reg 7(3) (see PARA 356) or that involves a change of ownership and falls to be dealt with under reg 8(1) (see PARA 357), for the period of four months there is substituted the period of 30 days: reg 37(2) (amended by SI 2006/3373). As to the meaning of 'month' see PARA 28 note 16.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 37(1) (amended by SI 2006/3373). As to the prescribed persons see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 37(1)(a)(i)-(viii), (3).

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 37(1)(a).

6 Ie arising under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38: see PARA 383.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 37(1)(b) (substituted by SI 2006/3373).

## **UPDATE**

### **382 Notification of decision in respect of applications in controlled localities**

NOTE 4--SI 2005/641 reg 37(3) amended: SI 2009/2205.

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### **383. Appeals in connection with determinations in respect of controlled localities.**

Where a primary care trust<sup>1</sup>:

- 243 (1) has determined an application in respect of a controlled locality<sup>2</sup>, and the provisions in respect of a minor relocation of premises<sup>3</sup> also applied to that application, the persons<sup>4</sup> who may appeal to the Secretary of State<sup>5</sup> are the applicant<sup>6</sup>, and any person who was given notice of the application<sup>7</sup> and made representations to the primary care trust<sup>8</sup>;
- 244 (2) has determined such an application, and the provisions in respect of in respect of a minor relocation of less than 500 metres<sup>9</sup>, a change of ownership<sup>10</sup>, suspension from a list<sup>11</sup>, or a right of return to a list<sup>12</sup>, also applied to that application; or the trust has made a decision whether or not to amend the premises named in the original application<sup>13</sup> in relation to that application; the persons who may appeal to the Secretary of State are the applicant<sup>14</sup> and any person who was given<sup>15</sup> notice of the decision<sup>16</sup>;
- 245 (3) has determined any such application, and the necessary or desirable test also applied<sup>17</sup> or would have applied but for an exemption<sup>18</sup>, the persons who may appeal to the Secretary of State are the applicant<sup>19</sup>, and<sup>20</sup> any person who was given notice of the application<sup>21</sup> and made representations to the trust<sup>22</sup>;
- 246 (4) has: (a) determined an application that does not fall within head (1), (2) or (3) above or a question raised by an application<sup>23</sup> (but not the application itself)<sup>24</sup>; (b) refused<sup>25</sup> to consider an application under those heads<sup>26</sup>; (c) determined that it should, or should not<sup>27</sup>, postpone the making or termination of arrangements for the provision of services<sup>28</sup>; (d) refused<sup>29</sup> to consider an application for preliminary consent<sup>30</sup>; (e) determined that the provisional date be extended<sup>31</sup>, the application for outline consent be refused<sup>32</sup>, or outline consent should lapse<sup>33</sup>; (f) determined an application for premises approval for new premises<sup>34</sup>; (g) determined an application for premises approval for additional or new premises<sup>35</sup>; (h) determined an application for premises approval in relation to a practice amalgamation<sup>36</sup>; (i) refused to grant temporary premises approval<sup>37</sup>; or (j) determined whether or not to grant premises approval to relevant premises<sup>38</sup>, an appeal to the Secretary of State may be made against that determination or, as the case may be, against that refusal, by any of the prescribed persons.<sup>39</sup>

Where, in determining any application or question raised by an application, a primary care trust has<sup>40</sup> considered that application or question together with one or more other applications or questions, any of the applicants and any of the prescribed persons<sup>41</sup> may appeal against the determination of any of the applications, or against any determination of a question raised by an application, and where the Secretary of State receives appeals against two or more of the determinations, those appeals must be considered together<sup>42</sup>.

An appeal<sup>43</sup> must be made in writing<sup>44</sup> within 30 days from the date on which notice of the decision was sent to the appellant and must contain a concise statement of the grounds of appeal on which the appellant intends to rely<sup>45</sup>. If the Secretary of State, after considering the notice of appeal, is of the opinion that it discloses no reasonable grounds of appeal, or that the appeal is otherwise vexatious or frivolous, he may determine the appeal by dismissing it<sup>46</sup>. The

Secretary of State may require an oral hearing of an appeal before he determines it<sup>47</sup>; and where he does so, must appoint one or more persons to hear the appeal who must report to him on it with recommendations as to the relevant findings of fact and their conclusions<sup>48</sup>.

On an appeal, the Secretary of State: (i) may allow the appeal<sup>49</sup>; (ii) may, in a case where the primary care trust, on determining the application, considered the question whether to impose conditions to postpone the making or termination of arrangements for the provision by a doctor or contractor of pharmaceutical services or dispensing services to patients on the relevant patient list, himself impose conditions to postpone for such period as he thinks fit, the making or termination of such arrangements<sup>50</sup>; (iii) must, in a case where that question was not considered by the primary care trust when it determined the application, remit the question to the trust for determination<sup>51</sup>; (iv) must, where he allows an appeal against a refusal of the primary care trust as mentioned in head (4)(b) above, remit the application to the trust<sup>52</sup>; or (v) may dismiss the appeal<sup>53</sup>. The decision of the Secretary of State must be given in writing and must include a statement of his reasons for the decision and of his findings of fact<sup>54</sup>, and as soon as practicable, be sent to the persons to whom notice of the hearing was sent<sup>55</sup>.

1 As to primary care trusts see PARA 111.

2 I.e. an application to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 33-36 (see PARAS 379, 381) applied. Regulations 38(1A), (1B) and (1C) do not apply to determinations of applications under reg 18ZA (see PARA 380) or reg 36(2) (see PARA 381): reg 38(1D) (reg 38(1A)-(1D) added by SI 2006/3373).

3 I.e. the provisions of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(1) (see PARA 355) or reg 7(1) (see PARA 356).

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the Secretary of State see PARA 6 note 8.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(1A)(a) (as added: see note 2). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

7 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(1A)(a)(i) (as added: see note 2).

8 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(1A)(a)(ii) (as added: see note 2).

9 I.e. the provisions of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 6(3) (see PARA 355) or reg 7(3) (see PARA 356).

10 I.e. the provisions of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 8: see PARA 357.

11 I.e. the provisions of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 9: see PARA 358.

12 I.e. the provisions of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10: see PARA 359.

13 I.e. under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(8): see PARA 384.

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(1B)(a) (as added: see note 2).

15 I.e. under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 37(1)(a)(iv), (v), (3)(c), (d): see PARA 382.

16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(1B)(b) (as added: see note 2).

17    Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 12: see PARA 361.

18    Ie an exemption under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13: see PARA 362.

19    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(1C)(a) (as added: see note 2).

20    Ie except in the case of an application to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(1) applies: see PARA 362.

21    See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(1C)(b) (i) (as added: see note 2).

22    See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(1C)(b) (ii) (as added: see note 2).

23    Ie an application to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 33-36 (see PARAS 379, 381) applied.

24    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(a) (substituted by SI 2006/3373).

25    Ie on the ground that it is not satisfied as mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 34(2): see PARA 379.

26    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(b).

27    Ie as mentioned in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20(2) (see PARA 366) or reg 35(6)(b) (see PARA 379).

28    See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(c).

29    Ie in accordance with the procedures set out in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 33-36: see PARAS 379, 381.

30    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(d). An application for preliminary consent is one under reg 40(1): see PARA 385.

31    Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 62(8): see PARA 405.

32    Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 62(13) (a): see PARA 405.

33    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(e). A determination that outline consent should lapse is one under reg 62(13)(b): see PARA 405.

34    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(f). Such a determination is one under reg 64(1): see PARA 407.

35    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(g). Such a determination is one under reg 65(1) or (3): see PARA 408.

36    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(h). Such a determination is one under reg 66(3): see PARA 409.

37    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(i). Such a determination is one under reg 65(9) (see PARA 408) or reg 66(4) (see PARA 409).

38    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2)(j). Such a determination is one under reg 67 (transitional provisions).

39    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(2). As to the prescribed persons see reg 38(3) (amended by SI 2006/552; SI 2006/3373).

40 le pursuant to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(9): see PARA 381.

41 As to the prescribed persons in this instance see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(3)(a) (amended by SI 2006/552; SI 2006/3373).

42 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(4).

43 The National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38 does not apply to any right of appeal specified in reg 19(6) (see PARA 365) or in reg 30 (see PARA 376): reg 38(1).

44 As to the meaning of 'writing' see PARA 7 note 2.

45 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(5). Unless reg 38(6) (see the text to note 46) applies, the Secretary of State must send a copy of the notice of appeal to the primary care trust whose determination is appealed against, and to other persons as specified: see reg 38(7). Any person to whom a copy of the notice of appeal is sent may, within 30 days from the date the copy was sent to him, make representations in writing on the appeal to the Secretary of State: reg 38(8).

46 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(6).

47 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(9).

48 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(10). The procedure at any oral hearing is determined by the person or persons hearing the appeal: reg 38(11). An oral hearing must take place at such time and place as the Secretary of State may direct, and notice of the hearing must be sent, not less than 14 days before the date fixed for the hearing, to the appellant, the primary care trust, and other persons as specified: see reg 38(12). The appellant and any of the persons to whom notice of the hearing is required to be sent may attend and be heard in person or by counsel, solicitor or other representative, and the primary care trust may be represented at the hearing by any duly authorised officer or member, or by counsel or solicitor: reg 38(13).

49 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(14)(a).

50 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(14)(b).

51 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(14)(c).

52 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(14)(d). In such a case the Secretary of State must direct that reg 34(1) (see PARA 379) does not apply: reg 38(14)(d).

53 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(14)(e).

54 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(15)(a).

55 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38(15)(b).

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### **384. Procedure after grant of application.**

A primary care trust<sup>1</sup> must not include an applicant in its pharmaceutical list<sup>2</sup>, or include him in respect of different premises or services, before<sup>3</sup> the specified date<sup>4</sup> and the satisfaction of the prescribed condition<sup>5</sup>.

The primary care trust may give notice to an applicant whose application<sup>6</sup> for inclusion in a pharmaceutical list has been granted requiring him to commence the provision of pharmaceutical services<sup>7</sup> by a date specified in its notice<sup>8</sup>. Where the primary care trust has given such a notice, it must include the applicant in its pharmaceutical list from the date specified unless: (1) the trust for good cause determines that the applicant must commence the provision of pharmaceutical services from a different date (being a date not later than nine months from the date of notification of the grant), in which case the applicant must be included in the pharmaceutical list from that date<sup>9</sup>; (2) the trust withdraws its notice<sup>10</sup>; or (3) the applicant appeals<sup>11</sup>, in which case where the appeal is unsuccessful the applicant must be included in the trust's pharmaceutical list in accordance with the Secretary of State's determination of the appeal<sup>12</sup>.

Where the primary care trust has granted an application<sup>13</sup> by an applicant who is already included in a pharmaceutical list<sup>14</sup>, and the applicant is suspended from the trust's pharmaceutical list<sup>15</sup> before giving the required notification<sup>16</sup>, a temporary chemist<sup>17</sup> whose application to provide pharmaceutical services in his place has been granted may give that notification; and (on satisfaction of the statutory requirements<sup>18</sup>) the primary care trust must include the temporary chemist in its pharmaceutical list<sup>19</sup>.

Where, at any time after making the application, but before: (a) the expiry of the six months referred to in the prescribed condition<sup>20</sup>, or of any further period allowed by the primary care trust or, on appeal, by the Secretary of State in accordance with that condition<sup>21</sup>; or (b) the date specified by the trust in its notice<sup>22</sup>, the applicant notifies the trust that he intends to change within the neighbourhood the premises from which he intends to provide pharmaceutical services, being the same services as those named in the application, and the trust is satisfied that the change is a minor relocation, it may<sup>23</sup> amend the premises named in the original application<sup>24</sup>. Where an application is one which falls to be determined in accordance with certain provisions relating to a controlled locality<sup>25</sup>, the primary care trust must not include the applicant in the relevant pharmaceutical list or alter such a list unless the application is finally granted<sup>26</sup>.

Where: (i) an application made by a temporary chemist<sup>27</sup> has been granted<sup>28</sup>; (ii) the temporary chemist is included in the pharmaceutical list in respect of the premises or services specified in the application<sup>29</sup>; and (iii) the suspension of the suspended chemist<sup>30</sup> in whose place the temporary chemist is providing pharmaceutical services is terminated (and has not been followed by removal of the suspended chemist's name from the pharmaceutical list)<sup>31</sup>, the temporary chemist's name must be removed from the pharmaceutical list in respect of the premises or services in question, and the name of the chemist who had previously been suspended must be included in the pharmaceutical list in respect of those premises or services in the place of the temporary chemist<sup>32</sup>.

1 As to primary care trusts see PARA 111.



2 As to the meaning of 'pharmaceutical list' see PARA 353.

3 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(1). This provision is expressed to be subject to reg 21(8): see PARA 367. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(1)(a). The specified date is whichever of the dates mentioned in head (1) or (2) is the later: (1) where notice of the primary care trust's decision is given under reg 27(1) (see PARA 373) or (as the case may be) reg 37(1) (see PARA 382), the day after the expiry of 30 days beginning on the date on which notice of the decision is given, or such lesser number of days as may be specified by the primary care trust if it considers that there is good cause to reduce the number of days (reg 39(9), (10)(a) (substituted by SI 2006/3373)); or (2) where an appeal or appeals relating to an application are made, the date on which the Secretary of State or the Family Health Services Appeal Authority, as the case may be, gives notice of his decision or its decision on the last such appeal to be decided (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(9), (10)(b)). As to the Secretary of State see PARA 6 note 8. As to the Family Health Services Appeal Authority see PARA 443.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(1)(b). The prescribed condition is that, where an application is granted by the primary care trust (or, on appeal, by the Secretary of State or the Family Health Services Appeal Authority), the applicant must be included in the primary care trust's pharmaceutical list, or included in respect of different premises or services, only if, not less than 14 days before: (1) the expiry of six months after the date on which the grant was notified to him by the trust in accordance with reg 27(1) (see PARA 373) or reg 37(1) (see PARA 382) (reg 39(2)(a)); or (2) the expiry of such further period or periods, not in all exceeding nine months from the date of notification of the grant, as it, or on appeal the Secretary of State, may for good cause allow (reg 39(2)(b)), he notifies the trust, in the prescribed form (see Sch 4 Pt 2), that he will within the next 14 days commence the provision of the services in respect of which the application was made at the premises to which the application related (reg 39(2)). As to the meaning of 'month' see PARA 28 note 16.

6 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(a): see PARA 354.

7 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(3) (amended by SI 2006/3373). The primary care trust may not specify in the notice a date: (1) earlier than the date specified in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(10) (see note 4) (reg 39(4)(a)); (2) within the period of 28 days beginning with the date of its notice (reg 39(4)(b)); (3) ending later than the period of three months beginning with the date of its notice (reg 39(4)(c)); or (4) ending later than nine months from the date of notification of the grant (reg 39(4)(d)). A notice must inform the applicant of his right to appeal against the notice under reg 29(5) (see PARA 375) and tell him how to make such an appeal: reg 39(5).

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(6)(a).

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(6)(b).

11 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29(5): see PARA 375.

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(6)(c).

13 Ie an application made under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(b) or (c): see PARA 354.

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(7)(a).

15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(7)(b).

16 Ie the notification required under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(2): see note 5.

17 As to the meaning of 'temporary chemist' see PARA 399 note 2.

18 Ie the requirements in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(1): see the text to notes 1-5.

- 19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(7). In the case of a grant of an application under reg 5(1)(c) (see PARA 354), the primary care trust must within the period of 14 days beginning with the date of receipt of the prescribed notice (see Sch 4 Pt 2) notify the primary care trust in whose list the applicant's existing premises are located of the applicant's intention to commence the provision of pharmaceutical services from his new premises: reg 39(12).
- 20 See note 5.
- 21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(8)(a).
- 22 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(8)(b). The notice referred to is that under reg 39(3): see the text to notes 6-8.
- 23 Ie subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 25 and 26: see PARAS 371, 372.
- 24 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(8).
- 25 Ie in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 22(3): see PARA 370.
- 26 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(11). An application granted in accordance with the provisions of regs 33-36 (see PARAS 379-381) must not be treated as finally granted for these purposes until the end of the period for bringing an appeal under reg 38 (see PARA 383) or until the determination of any such appeal, whichever is the later, and 'final grant' must be construed accordingly: reg 39(14).
- 27 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(b): see PARA 354.
- 28 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(13)(a).
- 29 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(13)(b).
- 30 As to the meaning of 'chemist' see PARA 349 note 1.
- 31 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(13)(c).
- 32 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(13).

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### **385. Preliminary consent to be included in a pharmaceutical list.**

A person<sup>1</sup> may apply to a primary care trust<sup>2</sup> for preliminary consent<sup>3</sup>. An application for preliminary consent must be in writing<sup>4</sup> and must: (1) specify the premises or the location of the premises from which the applicant intends to provide pharmaceutical services<sup>5</sup> if his application is granted<sup>6</sup>; (2) specify the pharmaceutical services which it is proposed to provide<sup>7</sup>; and (3) provide the prescribed information<sup>8</sup>. An application for preliminary consent must be determined as if it were an application<sup>9</sup> for admission to a pharmaceutical list<sup>10</sup>. A preliminary consent has effect for a period of six months<sup>11</sup> from its final grant<sup>12</sup>.

Where the applicant has been finally granted preliminary consent, the primary care trust must grant an application for admission to a pharmaceutical list<sup>13</sup> provided that<sup>14</sup>: (a) the date of the application<sup>15</sup> falls within the period<sup>16</sup> for which the preliminary consent has effect<sup>17</sup>; (b) the pharmaceutical services which it is proposed to provide are the same as those specified in the application for preliminary consent<sup>18</sup>; and (c) the premises specified in the application are within the location in respect of which the preliminary consent was granted<sup>19</sup>. Where heads (a) and (b) above are satisfied, but the premises specified in the application are in a different location from that in respect of which preliminary consent was granted, the primary care trust must treat the application as though it were an application<sup>20</sup> to change the location of the premises<sup>21</sup>. The grant of an application<sup>22</sup> is subject to any conditions imposed<sup>23</sup> in relation to the final grant of the corresponding preliminary consent, except where different conditions are imposed<sup>24</sup> in relation to the application in which case it is subject to those different conditions<sup>25</sup>.

1    I.e. a person to whom the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1) (see PARA 354) applies. As to the meaning of 'person' see PARA 17 note 2.

2    As to primary care trusts see PARA 111.

3    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 40(1). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4    As to the meaning of 'writing' see PARA 7 note 2.

5    As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

6    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 40(2)(a).

7    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 40(2)(b).

8    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 40(2)(c). As to the prescribed information see Sch 4 Pts 1 and 3.

9    I.e. an application made under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1): see PARA 354.

10   National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 40(3).

11   As to the meaning of 'month' see PARA 28 note 16.

12   National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 40(4). An application for preliminary consent must not be treated as finally granted until the end of the period for bringing an appeal relating to that application under any provision of the National Health Service (Pharmaceutical

Services) Regulations 2005, SI 2005/641, or until the determination of any such appeal, whichever is the later, and 'final grant' must be construed accordingly: reg 40(5).

13     Ie an application made under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1): see PARA 354.

14     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 41(1). This provision is expressed to be subject to reg 41(2) (see the text to notes 20-21), reg 19 (see PARA 365), and regs 25 and 26 (see PARAS 371, 372).

15     Ie the date on which the application was received by the primary care trust: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 41(1)(a).

16     Ie the period referred to in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 40(4): see the text to note 12.

17     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 41(1)(a).

18     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 41(1)(b).

19     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 41(1)(c).

20     Ie an application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 5(1)(b)(ii): see PARA 354.

21     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 41(2). The determination of such an application is subject to reg 19 (see PARA 365), and regs 25 and 26 (see PARAS 371, 372): reg 41(2).

22     Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 41.

23     Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 20, 21 (see PARAS 366, 367), reg 29, 30 (see PARAS 375, 376) or reg 38 (see PARA 383).

24     Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 42 or 43: see PARAS 368, 369.

25     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 41(3).

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**386. List of chemists providing an ETP service.**

A primary care trust<sup>1</sup> must prepare, maintain and publish a list (to be called the 'ETP list') of all chemists<sup>2</sup> in its area who participate in the ETP service<sup>3</sup>. The list must include the name of the chemist<sup>4</sup>, and the address of the premises at which the ETP service is provided<sup>5</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'chemist' see PARA 349 note 1.

3 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 71(1). 'ETP service' means the electronic prescription service which forms part of the NHS care record service: reg 2(1). 'NHS care record service' means the information technology systems procured by the Department of Health and used by the health service to hold medical records relating to patients: reg 2(1). As to the meaning of 'health service' see PARA 10 note 3. As to the Department of Health see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 463 et seq. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 71(2)(a).

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 71(2)(b).

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*(c) Withdrawals from Lists*

**387. Withdrawals from a list.**

Regulations<sup>1</sup> may provide for circumstances in which a practitioner<sup>2</sup>: (1) whom a primary care trust<sup>3</sup> is investigating in order to see whether there are grounds for exercising its powers of disqualification<sup>4</sup>, contingent removal<sup>5</sup> or suspension<sup>6</sup>; (2) whom a primary care trust has decided to remove from a list<sup>7</sup>, or contingently remove<sup>8</sup>, but who has not yet been removed or contingently removed<sup>9</sup>; or (3) who<sup>10</sup> has been suspended<sup>11</sup>, may not withdraw from a list in which he is included<sup>12</sup>.

Subject as set out below<sup>13</sup>, the primary care trust must, on receiving any notice from any chemist<sup>14</sup> that he intends to withdraw from the pharmaceutical list<sup>15</sup> in respect of particular premises<sup>16</sup>, so amend its pharmaceutical list either on the date notified by him<sup>17</sup>, or on the date from which it has agreed that the withdrawal is to take effect<sup>18</sup>, whichever is the earlier<sup>19</sup>. A chemist may withdraw a notice at any time before the primary care trust removes his name from its pharmaceutical list<sup>20</sup>.

Where a primary care trust is investigating a chemist: (a) for the purpose of deciding whether or not to exercise its powers of disqualification<sup>21</sup>, contingent removal<sup>22</sup> or suspension<sup>23</sup>; (b) in order to see whether the chemist has failed to comply with a condition imposed on his inclusion<sup>24</sup> so as to justify his removal from the pharmaceutical list<sup>25</sup>; or (c) who<sup>26</sup> has been suspended<sup>27</sup>, the chemist may not withdraw from any lists in which he is included, except where the Secretary of State<sup>28</sup> has given his consent, until the matter has been finally determined by the primary care trust<sup>29</sup>. Where a primary care trust has decided to remove a chemist from its pharmaceutical list<sup>30</sup>, or contingently remove him<sup>31</sup>, or remove him for breach of a condition imposed on inclusion<sup>32</sup>, but has not yet given effect to its decision, the chemist may not withdraw from any list in which he is included, except where the Secretary of State has given his consent<sup>33</sup>. Where a primary care trust has suspended a chemist<sup>34</sup>, the chemist may not withdraw from any of a primary care trust's lists in which he is included, except where the Secretary of State has given his consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the primary care trust<sup>35</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. The National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, have been made: see the text to notes 13-35.

2 As to the meaning of 'practitioner' see PARA 388 note 6.

3 As to primary care trusts see PARA 111.

4 Ie its powers under the National Health Service Act 2006 s 151: see PARA 388.

5 Ie its powers under the National Health Service Act 2006 s 152: see PARA 390.

6 National Health Service Act 2006 s 161(a). Its powers of suspension are those under the National Health Service Act 2006 s 154: see PARA 394.

7 Ie under the National Health Service Act 2006 s 151 (see PARA 388) or s 152 (see PARA 390).

8 Ie under the National Health Service Act 2006 s 152: see PARA 390.

- 9 National Health Service Act 2006 s 161(b).
- 10 Ie under the National Health Service Act 2006 s 154: see PARA 394.
- 11 National Health Service Act 2006 s 161(c).
- 12 National Health Service Act 2006 s 161. As to the equivalent provision to the National Health Service Act 2006 s 161 in relation to Wales see the National Health Service (Wales) Act 2006 s 117. As to the meaning of 'Wales' see PARA 6 note 2.
- 13 Ie subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(2)-(4): see the text to notes 20-33.
- 14 As to the meaning of 'chemist' see PARA 349 note 1.
- 15 As to the meaning of 'pharmaceutical list' see PARA 353.
- 16 Ie a notice pursuant to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 1 para 35, or Sch 3 para 22: see PARA 347.
- 17 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(1)(a).
- 18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(1)(b).
- 19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(1).
- 20 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(3).
- 21 Ie its powers under the National Health Service Act 2006 s 151: see PARA 388.
- 22 Ie its powers under the National Health Service Act 2006 s 152: see PARA 390.
- 23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(2)(a); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). Its powers of suspension are those under the National Health Service Act 2006 s 154: see PARA 394.
- 24 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21 (see PARA 367), reg 30 (see PARA 376), reg 42 (see PARA 368) or reg 43 (see PARA 369).
- 25 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(2)(b).
- 26 Ie under the National Health Service Act 2006 s 154(1)(a): see PARA 394.
- 27 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(2)(c); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).
- 28 As to the Secretary of State see PARA 6 note 8.
- 29 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(2).
- 30 Ie under the National Health Service Act 2006 s 151 (see PARA 388) or s 152 (see PARA 390).
- 31 Ie under the National Health Service Act 2006 s 152: see PARA 390.
- 32 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 44: see PARA 391.
- 33 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(4).
- 34 Ie under the National Health Service Act 2006 s 154(1)(b): see PARA 394.
- 35 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 53(5).

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*(d) Disqualification, Removal and Suspension*

**UPDATE**

**387 Withdrawals from a list**

TEXT AND NOTES--SI 2005/641 reg 53(7) applies where (1) a primary care trust (a) is carrying out an investigation of a chemist ('C') for one of the reasons given in reg 53(2); (b) has decided (i) to remove C from its pharmaceutical list under the National Health Service Act 2006 s 151 (see PARA 388) or s 152(3) (see PARA 390); (ii) to remove C contingently from its pharmaceutical list under s 152(1); or (iii) to remove C from its pharmaceutical list for a breach of a condition imposed on inclusion under SI 2005/641 reg 44 (see PARA 391), but has not yet given effect to its decision; or (c) has suspended C under the National Health Service Act 2006 s 154(1)(b) (see PARA 394); (2) an application is made, pursuant to SI 2005/641 reg 8 (see PARA 357), to change the ownership of any listed premises from which C has undertaken to provide pharmaceutical services in the primary care trust's area; and (3) if that application were granted, C would need to be removed from the pharmaceutical list: reg 53(6) (reg 53(6)-(8) added by SI 2009/2205). Where reg 53(7) applies, the primary care trust must determine the application and if it grants the application it may include the new owner of the premises on the pharmaceutical list, but it must not, without the consent of the Secretary of State, remove C's name from the pharmaceutical list until the investigation or the proceedings referred to in head (1) have been concluded: reg 53(7). If C's name is maintained on a pharmaceutical list pursuant to reg 53(7) a primary care trust may exercise its functions under regs 42-55 as regards C, but for all other purposes, C must be treated as though C's name had been removed from the pharmaceutical list following the granting of the change of ownership application: reg 53(8).

**388. Disqualification of practitioners.**

If it appears to a primary care trust<sup>1</sup> that any of the following conditions is established in relation to a person<sup>2</sup> included in a pharmaceutical list<sup>3</sup> it may or, in certain cases<sup>4</sup>, must decide to remove him from that list<sup>5</sup>. The conditions are: (1) that the continued inclusion of the practitioner<sup>6</sup> in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (known as an 'efficiency case')<sup>7</sup>; (2) that the practitioner has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme<sup>8</sup> by securing or trying to secure for himself or another any financial or other benefit<sup>9</sup>, and knew that he or the other was not entitled to the benefit<sup>10</sup> (known as a 'fraud case')<sup>11</sup>; (3) that the practitioner is unsuitable to be included in the list (known as an 'unsuitability case')<sup>12</sup>. The primary care trust must state which condition (or conditions) it is relying on when removing a practitioner from a list<sup>13</sup>.

Where the practitioner is a body corporate providing pharmaceutical services<sup>14</sup>, the body corporate must be treated as meeting condition (2) or (3) above if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person)<sup>15</sup>. A practitioner must be treated as meeting condition (2) above if: (a) another



person, because of an act or omission of his occurring in the course of providing any services<sup>16</sup> on the practitioner's behalf, meets that condition<sup>17</sup>; and (b) the practitioner failed to take all such steps as were reasonable to prevent the acts or omissions occurring in the course of the provision of those services on his behalf<sup>18</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to the meaning of 'pharmaceutical list' see PARA 340 note 12.

4 In cases falling within the National Health Service Act 2006 s 151(5): see note 12.

5 National Health Service Act 2006 s 151(1). As to suspension from a list pending a decision for removal or pending appeal see PARA 395. As to appeals see PARA 401. As to the equivalent provision to the National Health Service Act 2006 ss 151, 153 in relation to Wales see the National Health Service (Wales) Act 2006 ss 107, 109. As to the meaning of 'Wales' see PARA 6 note 2.

6 'Practitioner' means a person included in a pharmaceutical list: National Health Service Act 2006 s 151(9).

7 National Health Service Act 2006 s 151(2). As to the matters which a primary care trust must take into account where it is considering removal of a chemist's name from its pharmaceutical list in an efficiency case see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 46(5)-(7); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'chemist' see PARA 349 note 1. As to the procedure to be followed by the primary care trust in cases relating to fitness to practise grounds see PARA 393. As to contingent removal in an efficiency case see PARA 390. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

8 'Health scheme' means: (1) any of the health services under the National Health Service Act 2006 s 1(1) (see PARA 10), the National Health Service (Wales) Act 2006 s 1(1) (see PARA 74), or any enactment corresponding to the National Health Service Act 2006 s 1(1) and extending to Scotland or Northern Ireland (s 151(7)(a)); and (2) any prescribed scheme (s 151(7)(b)); and regulations may prescribe any scheme for these purposes which appears to the Secretary of State to be a health or medical scheme paid for out of public funds (s 151(7)). Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme: s 151(8). As to the meaning of 'patient' see PARA 15 note 6. 'Prescribed' means prescribed by regulations: s 275(1). In addition to the services covered by the definition of 'health scheme', the following are also health schemes: (a) health services, including medical and surgical treatment, provided by Her Majesty's Forces (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 49(a)); (b) services provided by port health authorities constituted under the Public Health (Control of Disease) Act 1984 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 102-103) (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 49(b)); (c) health services provided to a prisoner in the care of the medical officer or any other officer of a prison appointed for the purposes of the Prison Act 1952 s 7 (see **PRISONS** vol 36(2) (Reissue) PARA 515) (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 49(c)); and (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world (reg 49(d)).

9 National Health Service Act 2006 s 151(3)(a).

10 National Health Service Act 2006 s 151(3)(b).

11 National Health Service Act 2006 s 151(3). As to the matters which a primary care trust must take into account where it is considering removal of a chemist's name from its pharmaceutical list in a fraud case see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 46(3), (4), (7); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the procedure to be followed by the primary care trust in cases relating to fitness to practise grounds see PARA 393. As to contingent removal in a fraud case see PARA 390.

12 National Health Service Act 2006 s 151(4). In unsuitability cases, the primary care trust must remove the practitioner from the list in prescribed circumstances: s 151(5). As to the matters which a primary care trust must take into account where it is considering removal of a chemist's name from its pharmaceutical list in an unsuitability case see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 46(1), (2), (7) (reg 46(2) amended by SI 2006/3373); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the procedure to be followed by the primary care trust in cases relating to fitness to practise grounds see PARA 393.

13 National Health Service Act 2006 s 151(6); National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 46(8).

14 As to the meaning of 'pharmaceutical services' see PARA 339.

15 National Health Service Act 2006 s 153(1). As to the meaning of 'person' see PARA 17 note 2. As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**.

16 The services mentioned in the National Health Service Act 2006 s 151(1); see the text to notes 1-5.

17 National Health Service Act 2006 s 153(2)(a).

18 National Health Service Act 2006 s 153(2)(b).

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### **389. Regulations.**

Any decision by a primary care trust<sup>1</sup> relating to the removal or suspension of practitioners<sup>2</sup> must be reached in accordance with regulations<sup>3</sup> about such decisions<sup>4</sup>. The regulations must include provision: (1) requiring the practitioner to be given notice of any allegation against him<sup>5</sup>; (2) giving him the opportunity of putting his case at a hearing before a primary care trust makes any such decision affecting him<sup>6</sup>; (3) requiring him to be given notice of the decision of the primary care trust and the reasons for it and of any right of appeal which he may have<sup>7</sup>. The regulations may, in particular, make provision as to criteria which the primary care trust must apply when making decisions in unsuitability cases<sup>8</sup>.

1 As to primary care trusts see PARA 111.

2 I.e. decisions referred to in the National Health Service Act 2006 Pt 7 Ch 6 (ss 151-163). As to the meaning of 'practitioner' see PARA 388 note 6.

3 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

4 National Health Service Act 2006 s 162(1). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, have effect under the National Health Service Act 2006 s 162: see PARAS 388, 393, 396, 398. As to the equivalent provision to the National Health Service Act 2006 s 162 in relation to Wales see the National Health Service (Wales) Act 2006 s 118. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 s 162(2)(a).

6 National Health Service Act 2006 s 162(2)(b).

7 National Health Service Act 2006 s 162(2)(c).

8 National Health Service Act 2006 s 162(3). As to unsuitability cases see PARA 388.

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### **390. Contingent removal.**

In an efficiency case or a fraud case<sup>1</sup>, the primary care trust<sup>2</sup> may, instead of deciding to remove a practitioner<sup>3</sup> from its list, decide to remove him contingently<sup>4</sup>. If it so decides, it must impose such conditions as it may decide on his inclusion in the list with a view to, in an efficiency case, removing any prejudice to the efficiency of the services in question<sup>5</sup>; or, in a fraud case, preventing further acts or omissions<sup>6</sup> causing detriment to a health scheme<sup>7</sup>. If the primary care trust determines that the practitioner has failed to comply with a condition, it may decide to vary the conditions or impose different conditions<sup>8</sup>, or remove him from its list<sup>9</sup>.

The primary care trust may decide to vary the terms of service of the person<sup>10</sup> concerned for the purpose of or in connection with the imposition of any conditions by virtue of these provisions<sup>11</sup>.

1 As to efficiency cases and fraud cases see PARA 388.

2 As to primary care trusts see PARA 111.

3 As to the meaning of 'practitioner' see PARA 388 note 6.

4 National Health Service Act 2006 s 152(1). As to the review of decisions for contingent removal see PARA 397. As to appeals against such decisions see PARA 401. As to the equivalent provision to the National Health Service Act 2006 s 152 in relation to Wales see the National Health Service (Wales) Act 2006 s 108. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 s 152(2)(a).

6 I.e. acts or omissions within the National Health Service Act 2006 s 151(3)(a): see PARA 388.

7 National Health Service Act 2006 s 152(2)(b).

8 National Health Service Act 2006 s 152(3)(a).

9 National Health Service Act 2006 s 152(3)(b). As to the procedure to be followed by the primary care trust in cases relating to fitness to practise grounds see PARA 393. As to appeals against such decisions for removal see PARA 401.

10 As to the meaning of 'person' see PARA 17 note 2.

11 National Health Service Act 2006 s 152(4). As to terms of service see PARA 347.

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### **391. Removal from pharmaceutical lists.**

If a chemist<sup>1</sup> fails to comply with a condition which has been imposed on his inclusion in a pharmaceutical list<sup>2</sup>, the primary care trust<sup>3</sup> may remove him from its pharmaceutical list<sup>4</sup>.

A primary care trust must remove a chemist's name from its pharmaceutical list where it becomes aware that the chemist (and where the chemist is a body corporate, any director<sup>5</sup> or superintendent<sup>6</sup> of the chemist): (1) has been convicted in the United Kingdom<sup>7</sup> of murder<sup>8</sup>; (2) has been convicted in the United Kingdom of a criminal offence which was committed after 1 April 2005<sup>9</sup> and has been sentenced to a term of imprisonment of over six months<sup>10</sup>; or (3) is subject to a national disqualification<sup>11</sup>. The primary care trust must notify the chemist immediately that his name has been so removed from the pharmaceutical list<sup>12</sup>.

1 As to the meaning of 'chemist' see PARA 349 note 1.

2 I.e. a condition imposed under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 21 (see PARA 367), reg 30 (see PARA 376), reg 42 (see PARA 368) or reg 43 (see PARA 369). As to the meaning of 'pharmaceutical list' see PARA 353.

3 As to primary care trusts see PARA 111.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 44. The primary care trust must act in accordance with reg 48 (see PARA 393): see reg 44. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5 As to the meaning of 'director' see PARA 365 note 3.

6 As to the meaning of 'superintendent' see PARA 365 note 4.

7 As to the meaning of 'United Kingdom' see PARA 15 note 8.

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 47(1)(a). As to murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 89.

9 I.e. the date on which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, came into force.

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 47(1)(b). Where the ground for removal is that a director or superintendent of a body corporate has been convicted of a criminal offence (other than murder), the primary care trust must notify the body corporate that unless: (1) the director or superintendent concerned ceases to be a director or superintendent of the body corporate within the period of 28 days commencing with the date of the notice (reg 47(2)(a) (reg 47(2) amended by SI 2005/1501)); and (2) the body corporate notifies the trust of this fact within that period (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 47(2)(b)), it will remove the name of the body corporate from its pharmaceutical list (reg 47(2) (as so amended)).

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 47(1)(c). As to national disqualification see PARA 402.

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 47(3).

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### **392. Other grounds for removal from pharmaceutical lists.**

The following provisions do not apply to any case where a primary care trust<sup>1</sup> must remove a chemist from its pharmaceutical list<sup>2</sup>, or any case<sup>3</sup> to which the statutory procedure for removal applies<sup>4</sup>.

Where:

- 247 (1) a primary care trust determines that a person<sup>5</sup> included in its pharmaceutical list has died<sup>6</sup>, or is no longer a chemist<sup>7</sup>, the trust must remove his name from that list<sup>8</sup>;
- 248 (2) a chemist provides local pharmaceutical services<sup>9</sup> under a pharmacy pilot scheme<sup>10</sup> or an LPS scheme<sup>11</sup>, and no longer provides pharmaceutical services<sup>12</sup>, the primary care trust must remove his name from its pharmaceutical list<sup>13</sup>;
- 249 (3) a primary care trust receives a notice from another primary care trust<sup>14</sup>, it must remove the name of the chemist from its pharmaceutical list in respect of the existing premises with immediate effect from the date specified in the notice as the date for commencing the provision of pharmaceutical services from the new premises<sup>15</sup>;
- 250 (4) a chemist who had been suspended has resumed the provision of pharmaceutical services from premises other than those from which he had provided services prior to his suspension, the primary care trust must remove his name from its pharmaceutical list in respect of the premises from which he no longer provides pharmaceutical services<sup>16</sup>;
- 251 (5) a primary care trust determines that a chemist, whose name has been included for the preceding six months<sup>17</sup> in a pharmaceutical list, has not during that period provided pharmaceutical services at particular premises, it may remove the chemist's name from the list in respect of those premises<sup>18</sup>;
- 252 (6) a primary care trust determines that a chemist has breached a condition imposed as to the opening hours of premises<sup>19</sup>, it must<sup>20</sup> remove that chemist from the list in respect of the premises to which that condition relates<sup>21</sup>; or
- 253 (7) a primary care trust determines that a chemist has breached a condition imposed in respect of distance selling premises<sup>22</sup>, it must remove that chemist from the list in respect of the premises to which that condition relates<sup>23</sup>.

Before making any determination under head (5), (6), or (7) above, the primary care trust must give the chemist 28 days' notice of its intention<sup>24</sup>, afford the chemist an opportunity of making representations to the primary care trust in writing<sup>25</sup> or, if he so desires, in person<sup>26</sup>, and consult the local pharmaceutical committee<sup>27</sup>. Where, under those heads, the primary care trust decides to remove a chemist's name from its pharmaceutical list, it must give notice of its decision to the chemist<sup>28</sup>. A chemist to whom such a notice has been given may, within 30 days of receiving the notice, appeal to the Secretary of State<sup>29</sup> against the decision of the primary care trust and the trust must not remove the chemist's name from the pharmaceutical list until, if no appeal is made, the expiration of that period of 30 days<sup>30</sup> or, if an appeal is made, the appeal is determined<sup>31</sup>. Where the Secretary of State allows the appeal, he must direct the primary care trust not to remove the chemist's name from the pharmaceutical list<sup>32</sup>.

Nothing in these provisions prejudices the right of a chemist to be included again in a pharmaceutical list<sup>33</sup>, or affects a chemist who is performing a period of relevant service<sup>34</sup>; and no removal under head (5) above may be effected in respect of any such chemist until six months after he has completed that service<sup>35</sup>.

- 1 As to primary care trusts see PARA 111.
- 2 In any case to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 44 applies: see PARA 391. As to the meaning of 'pharmaceutical list' see PARA 353.
- 3 In any case to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48 applies: see PARA 393.
- 4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(1). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.
- 5 As to the meaning of 'person' see PARA 17 note 2.
- 6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(2)(a).
- 7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(2)(b). As to the meaning of 'chemist' see PARA 349 note 1.
- 8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(2). The name of any pharmacist whose business is carried on by representatives in accordance with the provisions of the Medicines Act 1968 s 72 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 913) must not be removed from the pharmaceutical list under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(2) so long as the business is carried on by them in accordance with the provisions of that Act, and the representatives agree to be bound by the terms of service: reg 45(4). As to the meaning of 'pharmacist' see PARA 345 note 3. As to terms of service see PARA 347.
- 9 As to the meaning of 'local pharmaceutical services' see PARA 359 note 6.
- 10 As to the meaning of 'pharmacy pilot scheme' see PARA 359 note 11.
- 11 As to the meaning of 'LPS scheme' see PARA 359 note 6.
- 12 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.
- 13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(3) (amended by SI 2006/552).
- 14 In a notice under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 39(12): see PARA 384.
- 15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(5).
- 16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(6).
- 17 A period during which the chemist provided no pharmaceutical services by reason only that he was suspended from the pharmaceutical list does not count towards the period of six months: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(9). As to the meaning of 'month' see PARA 28 note 16.
- 18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(7).
- 19 In a condition imposed by the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(2)(a): see PARA 362.
- 20 In subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(2)(b): see PARA 362.
- 21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(8)(a).

- 22     le a condition imposed by the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 13(4): see PARA 362.
- 23     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(8)(b).
- 24     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(10)(a).
- 25     As to the meaning of 'writing' see PARA 7 note 2.
- 26     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(10)(b).
- 27     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(10)(c). As to local pharmaceutical committees see PARA 351.
- 28     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(11) (amended by SI 2006/3373).
- 29     An appeal must be in writing and must set out the grounds of appeal: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(13). As to the Secretary of State see PARA 6 note 8.
- 30     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(12)(a).
- 31     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(12)(b).
- 32     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(14).
- 33     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(15)(a).
- 34     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(15)(b). 'Relevant service' means: (1) whole-time service in the armed forces of the Crown in a national emergency, whether as a volunteer or otherwise (reg 45(16)(a)); (2) compulsory whole-time service in those forces, including service resulting from any reserve liability (reg 45(16)(b)); or (3) any equivalent service by a person liable for compulsory whole-time service in those forces (reg 45(16)(c)). As to the armed forces see **ARMED FORCES**.
- 35     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 45(15).



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### **393. Procedure on removal on fitness to practise grounds.**

Where a primary care trust<sup>1</sup> is considering: (1) removing a chemist's<sup>2</sup> name from the pharmaceutical list<sup>3</sup> under the provisions<sup>4</sup> relating to the disqualification of practitioners<sup>5</sup>; (2) contingently removing a chemist's name<sup>6</sup> from the pharmaceutical list<sup>7</sup>; (3) removing a chemist's name from the pharmaceutical list for breach of a condition imposed<sup>8</sup> on contingent removal<sup>9</sup>; or (4) removing a chemist's name from the pharmaceutical list<sup>10</sup> for breach of a condition<sup>11</sup>, on fitness to practise grounds, it must follow the procedure set out below<sup>12</sup>.

Before reaching a decision of the kind mentioned in heads (1) to (4) above, the primary care trust must give the chemist: (a) notice of any allegation against him<sup>13</sup>; (b) notice of what action the trust is considering and on what grounds<sup>14</sup>; (c) the opportunity to make written<sup>15</sup> representations to the trust within the period of 28 days beginning with the date of the notification under head (b) above<sup>16</sup>; and (d) the opportunity to put his case at an oral hearing before the trust, if he so requests within that 28 day period<sup>17</sup>. If the primary care trust receives representations or a request for an oral hearing within the 28 day period, it must take the representations into account, or hold the hearing, as the case may be, before reaching its decision<sup>18</sup>. The primary care trust must notify the chemist of its decision, the reasons for it (including any facts relied upon), and, if the decision is adverse, that he has a right of appeal to the Family Health Services Appeal Authority<sup>19</sup>.

The primary care trust must not remove a chemist's name from the pharmaceutical list, or impose a contingent removal, until the determination by the Family Health Services Appeal Authority of any appeal against the trust's decision or any time for appeal has expired<sup>20</sup>. Where a primary care trust is notified by the Family Health Services Appeal Authority that it has considered: (i) an appeal by a chemist against a contingent removal by the trust, and the authority has decided to remove him instead<sup>21</sup>; or (ii) an appeal by a chemist against the imposition of conditions<sup>22</sup>, and the authority has decided not to include him in that list<sup>23</sup>, the trust must remove the chemist from its list and must notify the chemist immediately that it has done so<sup>24</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'chemist' see PARA 349 note 1.

3 As to the meaning of 'pharmaceutical list' see PARA 353.

4 Ie under the National Health Service Act 2006 s 151 (see PARA 388), other than in cases specified in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 47 (see PARA 391).

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(1)(a); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 Ie under the National Health Service Act 2006 s 152: see PARA 390.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(1)(b); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

8 Ie under the National Health Service Act 2006 s 152: see PARA 390.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(1)(c); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

10 le under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 44: see PARA 391.

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(1)(d).

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(1).

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(2)(a) (amended by SI 2006/3373).

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(2)(b).

15 As to the meaning of 'written' see PARA 7 note 2.

16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(2)(c).

17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(2)(d).

18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(3).

19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(4) (amended by SI 2006/3373). Where the primary care trust has decided to impose a contingent removal, it must also inform the chemist of his right to have the decision reviewed in accordance with the National Health Service Act 2006 s 157 (see PARA 397): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(5); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). The primary care trust must inform the chemist that if he wishes to appeal, he must do so within the period of 28 days beginning with the date on which the trust informs him of its decision, and must tell him how to proceed with making his appeal: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(6). As to the Family Health Services Appeal Authority see PARA 443.

20 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(7).

21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(8)(a).

22 le an appeal under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 30 (see PARA 376) where he has been included in a pharmaceutical list pursuant to reg 21(8) (see PARA 367).

23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(8)(b).

24 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 48(8).

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### **394. Suspension.**

If the primary care trust<sup>1</sup> is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a practitioner<sup>2</sup> from its list: (1) while it decides whether or not to exercise its powers<sup>3</sup> of disqualification or contingent removal<sup>4</sup>; or (2) while it waits for a decision affecting the practitioner of a court or of a body which regulates<sup>5</sup> (a) the practitioner's profession<sup>6</sup>; (b) the profession of a person<sup>7</sup> providing any of the services<sup>8</sup> on the practitioner's behalf<sup>9</sup>; or (c) if the practitioner is a body corporate, the profession of one of its directors, or one of the body of persons controlling it or (if it is a limited liability partnership) one of its members<sup>10</sup>; or one of that regulatory body's committees<sup>11</sup>.

In a case falling within head (1) above, the primary care trust must specify the length of the period of suspension<sup>12</sup>. In a case falling within head (2) above, the primary care trust may specify that the practitioner remains suspended after the decision referred to there for an additional period which the trust must specify<sup>13</sup>. In either case before that period expires it may extend, or further extend, the suspension for a further specified period<sup>14</sup>; or if that period has expired, it may impose a further suspension, for a period which it must specify<sup>15</sup>. The period of suspension (in a head (1) case) or the additional period (in a head (2) case), including in both cases the period of any further suspension imposed<sup>16</sup>, may not exceed six months<sup>17</sup> in aggregate, except: (i) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period)<sup>18</sup>; (ii) if, on the application of the primary care trust, the Family Health Services Appeal Authority<sup>19</sup> orders accordingly before the expiry of the period of suspension<sup>20</sup>; or (iii) if the primary care trust has applied under head (ii) above before the expiry of the period of suspension, but the Family Health Services Appeal Authority has not made an order by the time it expires, in which case it continues until the authority has made an order<sup>21</sup>. If the Family Health Services Appeal Authority does so order, it must specify the date on which the period of suspension will end<sup>22</sup>, or an event beyond which it will not continue<sup>23</sup>. The Family Health Services Appeal Authority may, on the application of the primary care trust, make a further order<sup>24</sup> at any time while the period of suspension pursuant to the earlier order is still continuing<sup>25</sup>.

The Secretary of State may make regulations providing for payments to practitioners who are suspended<sup>26</sup>; and those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State<sup>27</sup>.

While a practitioner is suspended he must be treated as not being included in the list from which he has been suspended even though his name appears in it<sup>28</sup>.

1 As to primary care trusts see PARA 111.

2 As to the procedure on suspension see PARA 396. As to the meaning of 'practitioner' see PARA 388 note 6.

3 I.e. its powers under the National Health Service Act 2006 s 151 (see PARA 388) or s 152 (see PARA 390) other than in circumstances falling within s 154(1)(b) (see the text to notes 5-11).

4 National Health Service Act 2006 s 154(1)(a). As to the equivalent provision to the National Health Service Act 2006 ss 154, 156 in relation to Wales see the National Health Service (Wales) Act 2006 ss 110, 112. As to the meaning of 'Wales' see PARA 6 note 2.

5 The references in the National Health Service Act 2006 s 154(1)(b) to a court or regulatory body are to a court or such a body anywhere in the world: s 154(2).

6 National Health Service Act 2006 s 154(1)(b)(i).

7 As to the meaning of 'person' see PARA 17 note 2.

8 Ie the services mentioned in the National Health Service Act 2006 s 151(1): see PARA 388.

9 National Health Service Act 2006 s 154(1)(b)(ii).

10 National Health Service Act 2006 s 154(1)(b)(iii). As to bodies corporate see **COMPANIES** vol 14 (2009) PARA 1; **CORPORATIONS**. As to limited liability partnerships see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq.

11 National Health Service Act 2006 s 154(1)(b).

12 National Health Service Act 2006 s 154(3).

13 National Health Service Act 2006 s 154(4).

14 National Health Service Act 2006 s 154(5)(a).

15 National Health Service Act 2006 s 154(5)(b).

16 Ie under the National Health Service Act 2006 s 154(5)(b): see the text to note 15.

17 As to the meaning of 'month' see PARA 28 note 16.

18 National Health Service Act 2006 s 154(6)(a). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. At the date at which this volume states the law no such provision had been made.

19 As to the Family Health Services Appeal Authority see PARA 443.

20 National Health Service Act 2006 s 154(6)(b).

21 National Health Service Act 2006 s 154(6)(c).

22 National Health Service Act 2006 s 154(7)(a).

23 National Health Service Act 2006 s 154(7)(b).

24 Ie complying with the National Health Service Act 2006 s 154(7): see the text to notes 22-23.

25 National Health Service Act 2006 s 154(8).

26 National Health Service Act 2006 s 154(9). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641 (see PARA 414) have effect under this provision.

27 National Health Service Act 2006 s 154(10).

28 National Health Service Act 2006 s 156. As to the review of decisions to suspend see PARA 397.

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### **395. Suspension pending appeal.**

If the primary care trust<sup>1</sup> decides to remove a practitioner<sup>2</sup> from a list<sup>3</sup>, it may also decide to suspend the practitioner from the list pending any appeal by him, if it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest<sup>4</sup>. If it does so suspend the practitioner, the suspension has effect from the date when the primary care trust gave him notice of the suspension<sup>5</sup>. The suspension has effect until its revocation<sup>6</sup> or, if later, until the expiry of the period of 28 days for giving notice of appeal<sup>7</sup>, or, if the practitioner appeals<sup>8</sup>, until the Family Health Services Appeal Authority<sup>9</sup> has disposed of the appeal<sup>10</sup>. The Secretary of State<sup>11</sup> may make regulations providing for payments to practitioners who are suspended<sup>12</sup>.

The primary care trust may revoke a suspension imposed these provisions<sup>13</sup>. If the practitioner appeals<sup>14</sup> against the decision of the primary care trust to remove him from the list, the Family Health Services Appeal Authority may also revoke such a suspension<sup>15</sup>. While a practitioner is suspended he must be treated as not being included in the list from which he has been suspended even though his name appears in it<sup>16</sup>.

1 As to primary care trusts see PARA 111.

2 Ie under the National Health Service Act 2006 s 151: see PARA 388. As to the meaning of 'practitioner' see PARA 388 note 6.

3 National Health Service Act 2006 s 155(1). As to the equivalent provision to the National Health Service Act 2006 ss 155, 156 in relation to Wales see the National Health Service (Wales) Act 2006 ss 111, 112. As to the meaning of 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 s 155(2). As to the procedure on suspension see PARA 396.

5 National Health Service Act 2006 s 155(3).

6 Ie under the National Health Service Act 2006 s 155(5) or (6): see the text to notes 13-15.

7 Ie the period referred to in the National Health Service Act 2006 s 158(1): see PARA 401.

8 Ie under the National Health Service Act 2006 s 158: see PARA 401.

9 As to the Family Health Services Appeal Authority see PARA 443.

10 National Health Service Act 2006 s 155(4).

11 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

12 Ie the provisions of the National Health Service Act 2006 s 154(9) and (10) (see PARA 394) apply for the purposes of s 155 as they apply for the purposes of s 154: s 155(7). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641 (see PARA 414) have effect under this provision.

13 National Health Service Act 2006 s 155(5).

14 Ie under the National Health Service Act 2006 s 158: see PARA 401.

15 National Health Service Act 2006 s 155(6).

16 National Health Service Act 2006 s 156.

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### **396. Procedure on suspension.**

Before reaching a decision to suspend a chemist<sup>1</sup>, the primary care trust<sup>2</sup> must give the chemist<sup>3</sup>: (1) notice of any allegation against him<sup>4</sup>; (2) notice of what action the trust is considering and on what grounds<sup>5</sup>; (3) the opportunity to put his case at an oral hearing before the trust, on a specified day, provided that at least 24 hours' notice of the hearing is given<sup>6</sup>. If the chemist does not wish to have an oral hearing or does not attend the oral hearing, the primary care trust may suspend the chemist with immediate effect<sup>7</sup>. If an oral hearing does take place, the primary care trust must take into account any representations made by the chemist before it reaches its decision<sup>8</sup>. The primary care trust may suspend a chemist with immediate effect following the hearing<sup>9</sup>. The primary care trust must notify the chemist of its decision and the reasons for it (including any facts relied upon) within seven days of making that decision<sup>10</sup>. The primary care trust may at any time revoke the suspension and notify the chemist of its decision<sup>11</sup>.

1     le under the National Health Service Act 2006 s 154 (see PARA 394) or s 155 (see PARA 395). As to the meaning of 'chemist' see PARA 349 note 1.

2     As to primary care trusts see PARA 111.

3     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(1)(a) (amended by SI 2006/3373).

5     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(1)(b).

6     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(1)(d) (amended by SI 2005/1501).

7     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(2) (reg 50(2) substituted, (2A) added, by SI 2005/1501).

8     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(2A) (as added: see note 7).

9     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(3) (amended by SI 2005/1501).

10    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(4) (amended by SI 2005/1501; SI 2006/3373). Where the primary care trust has decided to suspend a chemist under the National Health Service Act 2006 s 154 (see PARA 394), it must also inform the chemist of his right to have the decision reviewed in accordance with s 157 (see PARA 397): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(5).

11    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 50(6) (added by SI 2005/1501).

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### **397. Review of decisions.**

The primary care trust<sup>1</sup> may, and (except in prescribed<sup>2</sup> cases) if requested in writing<sup>3</sup> to do so by the practitioner<sup>4</sup> must, review a contingent removal<sup>5</sup> or a suspension<sup>6</sup> (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the Family Health Services Appeal Authority<sup>7</sup>, or a suspension imposed pending appeal)<sup>8</sup>. The practitioner may not request a review before the expiry of the period of three months<sup>9</sup> beginning with the date of the decision of the primary care trust to suspend or contingently remove him, or (as appropriate)<sup>10</sup>, six months beginning with the date of its decision on the previous review<sup>11</sup>. On such a review, the primary care trust may: (1) confirm the contingent removal or the suspension<sup>12</sup>; (2) in the case of a suspension, terminate it<sup>13</sup>; (3) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list<sup>14</sup>.

1 As to primary care trusts see PARA 111.

2 'Prescribed' means prescribed by regulations made by the Secretary of State: see the National Health Service Act 2006 s 275(1). As to the making of regulations see PARA 9. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. At the date at which this volume states the law no such regulations had been made.

3 As to the meaning of 'writing' see PARA 7 note 2.

4 As to the meaning of 'practitioner' see PARA 388 note 6.

5 As to contingent removal see PARA 390.

6 As to suspension see PARA 394.

7 As to the Family Health Services Appeal Authority see PARA 443.

8 National Health Service Act 2006 s 157(1). A suspension pending appeal is one imposed under s 155: see PARA 395. As to the equivalent provision to the National Health Service Act 2006 s 157 in relation to Wales see the National Health Service (Wales) Act 2006 s 113. As to the meaning of 'Wales' see PARA 6 note 2.

9 As to the meaning of 'month' see PARA 28 note 16.

10 National Health Service Act 2006 s 157(2)(a).

11 National Health Service Act 2006 s 157(2)(b).

12 National Health Service Act 2006 s 157(3)(a). As to appeals against any decision on a review of a contingent removal see PARA 401.

13 National Health Service Act 2006 s 157(3)(b).

14 National Health Service Act 2006 s 157(4)(c).



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### **398. Procedure on review of decisions.**

Where<sup>1</sup> a primary care trust<sup>2</sup> must review its decision to contingently remove a chemist<sup>3</sup> from the pharmaceutical list<sup>4</sup> or suspend a chemist from the pharmaceutical list, or where it decides to review such a decision, it must give the chemist<sup>5</sup>: (1) notice that it intends to review its decision<sup>6</sup>; (2) notice of the decision it is minded to take upon review, and the reasons for it<sup>7</sup>; (3) the opportunity to make written<sup>8</sup> representations to the trust within the period of 28 days beginning with the date of the notification under head (1) above<sup>9</sup>; and (4) the opportunity to put his case at an oral hearing before the trust, if he so requests within that 28 day period<sup>10</sup>. If the primary care trust receives representations or a request for an oral hearing within the 28 day period, it must take the representations into account, or hold the hearing, as the case may be, before reaching its decision<sup>11</sup>. The primary care trust must notify the chemist of its decision, the reasons for it (including any facts relied upon), and any right of appeal to the Family Health Services Appeal Authority<sup>12</sup>. The primary care trust must also notify the chemist of his right<sup>13</sup> to have the decision further reviewed<sup>14</sup>.

1    In accordance with the National Health Service Act 2006 s 157: see PARA 397.

2    As to primary care trusts see PARA 111.

3    As to the meaning of 'chemist' see PARA 349 note 1.

4    As to the meaning of 'pharmaceutical list' see PARA 353.

5    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 51(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 51(1)(a) (amended by SI 2006/3373).

7    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 51(1)(b).

8    As to the meaning of 'written' see PARA 7 note 2.

9    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 51(1)(c).

10   National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 51(1)(d).

11   National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 51(2).

12   National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 51(3) (amended by SI 2006/3373). The primary care trust must inform the chemist that if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which the trust informs him of its decision, and must tell him how to proceed with making his appeal: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 51(4). As to the Family Health Services Appeal Authority see PARA 443.

13   In accordance with the National Health Service Act 2006 s 157: see PARA 397.

14   National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 51(5); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

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### **399. Temporary provision of services during a period of suspension.**

A chemist<sup>1</sup> who has been suspended, except a temporary chemist<sup>2</sup> who has been suspended, may nominate to the primary care trust<sup>3</sup> a person<sup>4</sup> or persons to provide pharmaceutical services<sup>5</sup> in his place, for the period of his suspension<sup>6</sup>. A nominated person may apply<sup>7</sup> to the primary care trust for temporary inclusion in that trust's pharmaceutical list<sup>8</sup>; or if he is already included in that trust's pharmaceutical list, for temporary inclusion in respect of the premises from which the suspended chemist had undertaken to provide pharmaceutical services, or in respect of the pharmaceutical services which the suspended chemist had undertaken to provide<sup>9</sup>.

Before the end of the period of 14 days beginning with the day on which it has received both such a nomination and an application, a primary care trust must: (1) determine the application<sup>10</sup>; (2) invite representations if appropriate<sup>11</sup>; or (3) where it considers that there are grounds for deferring consideration or determination of the application<sup>12</sup>, notify the applicant to that effect<sup>13</sup>. A primary care trust must, as soon as is practicable, give notice of its decision on an application<sup>14</sup> to the applicant<sup>15</sup>, the suspended chemist<sup>16</sup>, and where it decides to grant the application, the local pharmaceutical committee and the local medical committee established for the trust's area<sup>17</sup>. Where a primary care trust grants an application, it must include the applicant in its pharmaceutical list or, where the applicant is already included in that list, include him in relation to the premises or services specified in the application<sup>18</sup>. Where a primary care trust has refused a person's application to be a temporary chemist that person may appeal<sup>19</sup> to the Secretary of State<sup>20</sup>.

The suspended chemist may at any time during the period of his suspension inform the primary care trust in writing<sup>21</sup> that he no longer consents to the provision of pharmaceutical services by the temporary chemist<sup>22</sup>, and he requires that the temporary chemist should cease the provision of pharmaceutical services with effect from a specified date<sup>23</sup>. Where the primary care trust receives such a notification from the suspended chemist, it must, as soon as practicable, notify the temporary chemist that he is to cease the provision of pharmaceutical services with effect from the specified date, and must remove his name from the pharmaceutical list with effect from that date<sup>24</sup>.

A primary care trust may at any time remove a temporary chemist's name from the pharmaceutical list if the temporary chemist is in a relationship with the suspended chemist which makes it unlikely that he will be able to exercise an appropriate degree of autonomy<sup>25</sup>. Where a primary care trust is minded to so remove a temporary chemist's name from the pharmaceutical list, it must: (a) as soon as practicable, notify the suspended chemist and the temporary chemist that it is so minded, giving a brief statement of its reasons<sup>26</sup>; (b) afford to the suspended chemist and the temporary chemist an opportunity to make representations to it in writing or, if they so desire, in person, before the end of the period of 14 days beginning on the day on which the notification is given<sup>27</sup>; (c) make a decision as to removal from the pharmaceutical list before the end of the period of 14 days beginning on the day on which it receives or hears the applicant's or the suspended chemist's representations, whichever is the later of the two, or, where no representations are made, the day on which the time for making such representations expires<sup>28</sup>; and (d) as soon as practicable, give notice of its decision to the suspended chemist and the temporary chemist<sup>29</sup>.

On and after the date on which the period of suspension of the suspended chemist ends (whether the suspended chemist's name is removed from the pharmaceutical list or whether he is reinstated as a chemist), the temporary chemist may no longer provide the pharmaceutical services that he had previously provided in the place of the chemist who had been suspended; and the primary care trust must remove the temporary chemist's name from its pharmaceutical list with effect from that date<sup>30</sup>.

- 1 As to the meaning of 'chemist' see PARA 349 note 1.
- 2 'Temporary chemist' means a chemist whose application has been granted under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54 and who is included in a pharmaceutical list pursuant to that regulation: reg 2(1).
- 3 As to primary care trusts see PARA 111.
- 4 As to the meaning of 'person' see PARA 17 note 2.
- 5 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.
- 6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(1). As to suspension see PARAS 394, 395. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.
- 7 As to the making of an application see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(3) (amended by SI 2005/1501).
- 8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(2)(a). As to the meaning of 'pharmaceutical list' see PARA 353.
- 9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(2)(b).
- 10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(13)(a). As to the determination of the application see reg 54(4)-(12).
- 11 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(13)(b).
- 12 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 26: see PARA 372.
- 13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(13)(c) (amended by SI 2006/3373).
- 14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(14) (amended by SI 2006/3373).
- 15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(14)(a).
- 16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(14)(b).
- 17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(14)(c). As to local pharmaceutical committees see PARA 351. As to local medical committees see PARA 272.
- 18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(16). Where an applicant is already included in the primary care trust's pharmaceutical list, or has been granted preliminary consent to be included in that list, and in either case is subject to conditions imposed in accordance with reg 21 (see PARA 367), reg 30 (see PARA 376), reg 42 (see PARA 368) or reg 43 (see PARA 369), a grant of his application must be subject to those same conditions: reg 54(15). As to preliminary consent see PARA 385.
- 19 Ie in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 29: see PARA 375.
- 20 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(24). As to the Secretary of State see PARA 6 note 8.
- 21 As to the meaning of 'writing' see PARA 7 note 2.

22 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(17)(a).

23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(17)(b). A suspended chemist must give the primary care trust at least two working days' notice of the specified date; and 'working day' means any day other than Saturday, Sunday, Christmas Day, Good Friday or a bank holiday: reg 54(18). 'Bank holiday' means any day that is specified or proclaimed as a bank holiday in England pursuant to the Banking and Financial Dealings Act 1971 s 1 (see **TIME** vol 97 (2010) PARA 321): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1).

24 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(19) (amended by SI 2006/3373). In the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54, references to removing a temporary chemist's name from a pharmaceutical list must be construed as removing his name in respect of the premises from which he has provided pharmaceutical services under reg 54 (or in respect of the pharmaceutical services he has provided under reg 54): reg 54(23).

25 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(20). See also note 24.

26 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(21)(a).

27 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(21)(b).

28 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(21)(c).

29 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(21)(d) (amended by SI 2006/3373).

30 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 54(22). See also note 24.

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#### **400. Notification of decisions.**

Regulations<sup>1</sup> may require a primary care trust<sup>2</sup> to notify prescribed persons<sup>3</sup>, or persons of prescribed descriptions, of any decision it makes as to the removal or suspension of practitioners<sup>4</sup>, and of any information relevant to the decision which it considers appropriate to include in the notification<sup>5</sup>.

Where a primary care trust:(1) removes a chemist's name<sup>6</sup> from the pharmaceutical list<sup>7</sup>; (2) contingently removes a chemist's name<sup>8</sup> from the pharmaceutical list<sup>9</sup>; (3) suspends a chemist from the pharmaceutical list<sup>10</sup>; (4) removes a chemist's name from the pharmaceutical list<sup>11</sup> for breach of a condition<sup>12</sup>; or (5) removes a chemist's name from the pharmaceutical list for breach of a condition imposed<sup>13</sup> on contingent removal<sup>14</sup>, it must notify, within seven days of the date of the decision to remove, contingently remove or suspend, the prescribed persons and bodies<sup>15</sup> of the specified matters<sup>16</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 As to primary care trusts see PARA 111.

3 'Prescribed' means prescribed by regulations: see the National Health Service Act 2006 s 275(1). As to the meaning of 'person' see PARA 17 note 2.

4 Ie any decision under the National Health Service Act 2006 Pt 7 Ch 6 (ss 151-163). As to the meaning of 'practitioner' see PARA 388 note 6.

5 National Health Service Act 2006 s 160. As to the equivalent provision to the National Health Service Act 2006 s 160 in relation to Wales see the National Health Service (Wales) Act 2006 s 116. As to the meaning of 'Wales' see PARA 6 note 2.

6 Ie under the National Health Service Act 2006 s 151: see PARA 388. As to the meaning of 'chemist' see PARA 349 note 1.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 55(1)(a); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'pharmaceutical list' see PARA 353. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

8 Ie under the National Health Service Act 2006 s 152: see PARA 390.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 55(1)(b); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 55(1)(c). As to suspension see PARAS 394, 395.

11 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 44: see PARA 391.

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 55(1)(d).

13 Ie under the National Health Service Act 2006 s 152: see PARA 390.

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 55(1)(e).

15     le the persons and bodies specified in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(2): see PARA 374.

16     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 55(1) (amended by SI 2006/3373). The specified matters are those set out in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 28(4) (see PARA 374): reg 55(1). The primary care trust must additionally notify within seven days of the request in writing those specified in reg 28(3) (see PARA 374) if so requested by those persons or bodies in writing (including electronically): reg 55(1) (as so amended). The applicant or chemist in relation to whom such a decision has been taken under reg 55(1) is called a 'pharmaceutical practitioner' in reg 28: reg 55(1). The provisions of reg 28(5)-(8) (see PARA 374) apply to notifications given under reg 55 as they apply to notifications given under reg 28(1): reg 55(2). As to the meaning of 'writing' see PARA 7 note 2.

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#### **401. Appeals.**

A practitioner<sup>1</sup> may appeal to the Family Health Services Appeal Authority<sup>2</sup> against a decision of a primary care trust<sup>3</sup> by giving notice in writing<sup>4</sup> to the authority within the period of 28 days beginning with the date on which the trust gave him notice of the decision<sup>5</sup>. The primary care trust decisions in question are:

- 254 (1) to remove<sup>6</sup> the practitioner from a list<sup>7</sup>;
- 255 (2) to remove<sup>8</sup> him contingently<sup>9</sup>;
- 256 (3) to impose any particular condition on contingent removal<sup>10</sup>, or to vary any such condition or to impose any different condition<sup>11</sup>;
- 257 (4) to vary<sup>12</sup> his terms of service<sup>13</sup>;
- 258 (5) any decision on a review<sup>14</sup> of a contingent removal<sup>15</sup>.

The appeal must be way of redetermination of the decision of the primary care trust<sup>16</sup>. On an appeal, the Family Health Services Appeal Authority may make any decision which the primary care trust could have made<sup>17</sup>. If the Family Health Services Appeal Authority decides to remove the practitioner contingently: (a) the primary care trust and the practitioner may each apply to the authority for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked<sup>18</sup>; and (b) the trust may remove him from its list if it determines that he has failed to comply with a condition<sup>19</sup>.

The primary care trust may not remove a person from a list, or impose a contingent removal until the expiry of the period of 28 days<sup>20</sup> within which the practitioner may appeal<sup>21</sup> or, if the practitioner appeals within that period, until the Family Health Services Appeal Authority has disposed of the appeal<sup>22</sup>.

Regulations<sup>23</sup> may provide for payments by primary care trusts to practitioners who are removed from lists pursuant to decisions of the Family Health Services Appeal Authority under these provisions, but whose appeals against those decisions are successful<sup>24</sup>.

1 As to the meaning of 'practitioner' see PARA 388 note 6.

2 As to the Family Health Services Appeal Authority see PARA 443.

3 As to primary care trusts see PARA 111.

4 As to the meaning of 'writing' see PARA 7 note 2.

5 National Health Service Act 2006 s 158(1). As to the equivalent provision to the National Health Service Act 2006 s 158 in relation to Wales see the National Health Service (Wales) Act 2006 s 114. As to the meaning of 'Wales' see PARA 6 note 2.

6 Ie under the National Health Service Act 2006 s 151 (see PARA 388), s 152(3) (see PARA 390) or s 158(5)(b) (see the text to note 19).

7 National Health Service Act 2006 s 158(2)(a).

8 Ie under the National Health Service Act 2006 s 152: see PARA 390.

9 National Health Service Act 2006 s 158(2)(b).

- 10    le under the National Health Service Act 2006 s 152: see PARA 390.
- 11    National Health Service Act 2006 s 158(2)(c).
- 12    le under the National Health Service Act 2006 s 152(4): see PARA 390.
- 13    National Health Service Act 2006 s 158(2)(d). As to terms of service see PARA 347.
- 14    le under the National Health Service Act 2006 s 157: see PARA 397.
- 15    National Health Service Act 2006 s 158(2)(e).
- 16    National Health Service Act 2006 s 158(3).
- 17    National Health Service Act 2006 s 158(4). If the practitioner appeals against a decision of the primary care trust to remove him from the list, the Family Health Services Appeal Authority may also revoke a suspension pending appeal imposed on him under s 155: see s 155(6); and PARA 395. As to the power of the Family Health Services Appeal Authority to impose a national disqualification see PARA 402.
- 18    National Health Service Act 2006 s 158(5)(a).
- 19    National Health Service Act 2006 s 158(5)(b).
- 20    le the period referred to in the National Health Service Act 2006 s 158(1): see the text to notes 1-5.
- 21    National Health Service Act 2006 s 158(6)(a).
- 22    National Health Service Act 2006 s 158(6)(b).
- 23    As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.
- 24    National Health Service Act 2006 s 158(7). The regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State: s 158(8). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. At the date at which this volume states the law no such regulations had been made.



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#### **402. National disqualification.**

If the Family Health Services Appeal Authority<sup>1</sup> removes the practitioner<sup>2</sup> from a list, it may also decide to disqualify him from inclusion in: (1) the pharmaceutical lists<sup>3</sup> prepared by each primary care trust<sup>4</sup>; (2) the supplementary lists<sup>5</sup> prepared by each primary care trust<sup>6</sup>; (3) the medical performers list<sup>7</sup>, dental performers list<sup>8</sup> or the ophthalmic list<sup>9</sup> prepared by each primary care trust<sup>10</sup>; (4) the local pharmaceutical services lists<sup>11</sup> prepared by each primary care trust<sup>12</sup>; (5) the lists corresponding to the lists mentioned in heads (1) to (4) above prepared by each local health board<sup>13</sup> under or by virtue of the National Health Service (Wales) Act 2006<sup>14</sup>; or only from inclusion in one or more descriptions of such lists prepared by each primary care trust and each local health board, the description being specified by the authority in its decision<sup>15</sup>. Such a decision is known as the imposition of a 'national disqualification'<sup>16</sup>. The Family Health Services Appeal Authority may also impose a national disqualification on a practitioner if it dismisses an appeal by him against the refusal by a primary care trust to include him in such a list<sup>17</sup>.

The primary care trust may apply to the Family Health Services Appeal Authority for a national disqualification to be imposed on a person<sup>18</sup> after the trust has removed him from a list prepared by it of any of the kinds referred to in heads (1) to (4) above<sup>19</sup>, or refused to include him in such a list<sup>20</sup>. Any such application must be made before the end of the period of three months<sup>21</sup> beginning with the date of the removal or of the primary care trust's refusal<sup>22</sup>.

If the Family Health Services Appeal Authority imposes a national disqualification on a person: (a) no primary care trust or local health board may include him in a list of any of the kinds prepared by it from which he has been disqualified from inclusion<sup>23</sup>; and (b) if he is included in such a list, each primary care trust and each local health board in whose list he is included must remove him from it<sup>24</sup>.

The Family Health Services Appeal Authority may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it<sup>25</sup>. The person may not request such a review before the end of the period of two years beginning with the date on which the national disqualification was imposed<sup>26</sup>, or one year beginning with the date of the authority's decision on the last such review<sup>27</sup>.

1 As to the Family Health Services Appeal Authority see PARA 443. As to appeals to the Family Health Services Appeal Authority see PARA 401.

2 As to the meaning of 'practitioner' see PARA 388 note 6.

3 As to the meaning of 'pharmaceutical list' see PARA 340 note 12.

4 National Health Service Act 2006 s 159(1)(a). As to primary care trusts see PARA 111. As to the equivalent provision to the National Health Service Act 2006 s 159 in relation to Wales see the National Health Service (Wales) Act 2006 s 115. As to the meaning of 'Wales' see PARA 6 note 2.

5 As to the meaning of 'supplementary list' see PARA 344.

6 National Health Service Act 2006 s 159(1)(b).

7 Ie the list prepared under the National Health Service Act 2006 s 91: see PARA 248.

- 8 le the list prepared under the National Health Service Act 2006 s 106: see PARA 283.
- 9 le the list prepared under the National Health Service Act 2006 s 123: see PARA 335.
- 10 National Health Service Act 2006 s 159(1)(c).
- 11 le the lists under the National Health Service Act 2006 s 146 (see PARA 417), or the lists corresponding to the lists under s 91 (see PARA 248) prepared by virtue of regulations made under s 145 (see PARA 416).
- 12 National Health Service Act 2006 s 159(1)(d).
- 13 As to the meaning of 'local health board' see PARA 17 note 13.
- 14 National Health Service Act 2006 s 159(1)(e).
- 15 National Health Service Act 2006 s 159(1).
- 16 See the National Health Service Act 2006 s 159(2).
- 17 National Health Service Act 2006 s 159(3).
- 18 As to the meaning of 'person' see PARA 17 note 2.
- 19 National Health Service Act 2006 s 159(4)(a).
- 20 National Health Service Act 2006 s 159(4)(b).
- 21 As to the meaning of 'month' see PARA 28 note 16.
- 22 National Health Service Act 2006 s 159(5).
- 23 National Health Service Act 2006 s 159(6)(a).
- 24 National Health Service Act 2006 s 159(6)(b).
- 25 National Health Service Act 2006 s 159(7).
- 26 National Health Service Act 2006 s 159(8)(a). The Secretary of State may provide in regulations for s 159(8) to have effect in prescribed circumstances as if the reference there to 'two years' or 'one year' were a reference to a different period specified in the regulations: s 159(9). 'Prescribed' means prescribed by regulations: s 275(1). As to the making of regulations see PARA 9. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.
- The period for review of a national disqualification is the period specified below instead of that in s 159(8) where the circumstances are that: (1) on making a decision to impose a national disqualification, the Family Health Services Appeal Authority states that it is of the opinion that the criminal or professional conduct of the disqualified person is such that there is no realistic prospect of a further review being successful if held within the period specified in s 159(8)(a), in which case the reference to 'two years' in that provision is a reference to five years (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 52(a)); (2) on the last review by the authority of a national disqualification the disqualified person was unsuccessful and the authority states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review, in which case the reference to 'one year' in the National Health Service Act 2006 s 159(8)(b) is a reference to three years (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 52(b)); (3) the authority states that it is of the opinion that because a criminal conviction considered by it in reaching its decision has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to 'two years' or 'one year' in the National Health Service Act 2006 s 159(8) is a reference to the period that has already elapsed (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 52(c)); or (4) the authority is of the opinion that because the decision of a licensing or regulatory body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to 'two years' or 'one year' in the National Health Service Act 2006 s 159(8) is a reference to the period that has already elapsed (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 52(d)). 'Licensing or regulatory body' means a body that licenses or regulates any profession of which the person is or has been a member, and includes any body which licenses or regulates any such profession in a country other than the United Kingdom: reg 2(1). As to the meaning of 'United Kingdom' see PARA 15 note 8. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.
- 27 National Health Service Act 2006 s 159(8)(b). See also note 26.



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### **403. Corresponding decisions.**

Where it appears to the Secretary of State<sup>1</sup> that there is provision in Scotland or Northern Ireland under which a person<sup>2</sup> may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under the provisions of the National Health Service Act 2006<sup>3</sup> relating to the removal and suspension of practitioners<sup>4</sup>, he may make regulations<sup>5</sup> providing for the effect to be given in England<sup>6</sup> to a corresponding decision<sup>7</sup>. That effect need not be the same as the effect of the decision in the place where it was made<sup>8</sup>; but the regulations may not provide for a corresponding decision to be reviewed or revoked in England<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the meaning of 'person' see PARA 17 note 2.

3 I.e. the provisions of the National Health Service Act 2006 Pt 7 Ch 6 (ss 151-163).

4 National Health Service Act 2006 s 163(1). A decision in Scotland or Northern Ireland to deal with such a person in such a way is referred to as a 'corresponding decision': s 163(2). As to the equivalent provision to the National Health Service Act 2006 s 163 in relation to Wales see the National Health Service (Wales) Act 2006 s 119. As to the meaning of 'Wales' see PARA 6 note 2.

5 As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

6 As to the meaning of 'England' see PARA 6 note 2.

7 National Health Service Act 2006 s 163(3).

8 National Health Service Act 2006 s 163(4).

9 National Health Service Act 2006 s 163(5).

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## (C) PROVISION OF PHARMACEUTICAL SERVICES BY DOCTORS

### **404. Arrangements for provision of pharmaceutical services by doctors.**

Where a patient:

- 259 (1) satisfies a primary care trust<sup>1</sup> that he would have serious difficulty in obtaining any necessary drugs or appliances<sup>2</sup> from a pharmacy<sup>3</sup> by reason of distance or inadequacy of means of communication<sup>4</sup>;
- 260 (2) is resident in a controlled locality<sup>5</sup>, at a distance of more than 1.6 kilometres from any pharmacy (other than a distance selling chemist<sup>6</sup>), and one of the specified conditions<sup>7</sup> is satisfied in his case<sup>8</sup>;
- 261 (3) is resident in a controlled locality and any pharmacy within a distance of 1.6 kilometres from where the patient lives: (a) has been determined to be in a reserved location<sup>9</sup>, and that determination has not been altered on appeal or by way of a further determination<sup>10</sup>; or (b) is a distance selling chemist<sup>11</sup>, and one of the specified conditions<sup>12</sup> is satisfied in his case<sup>13</sup>; or
- 262 (4) is one to whom head (1) or (2) above applies and at the time of the request the patient is living as a member of the household, other than as a temporary resident, of another person in respect of whom a doctor<sup>14</sup> has residual premises approval<sup>15</sup>,

he may at any time request in writing<sup>16</sup> a doctor<sup>17</sup> to provide him with pharmaceutical services<sup>18</sup>.

If a doctor so requested by a patient: (i) applies to provide pharmaceutical services to the patient, and sends with his application the patient's request in writing, the primary care trust must make arrangements with him for the provision<sup>19</sup> of such services by him<sup>20</sup>; or (ii) does not so apply within 30 days, the primary care trust may require him to undertake such provision<sup>21</sup> and must give him notice to that effect<sup>22</sup>. A primary care trust must give a doctor reasonable notice that it requires him to provide pharmaceutical services to any person<sup>23</sup>, or that where a person no longer satisfies the statutory provisions<sup>24</sup>, the doctor must discontinue the provision of pharmaceutical services to that person<sup>25</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'drugs' see PARA 353 note 7. As to the meaning of 'appliance' see PARA 345 note 3.

3 As to the meaning of 'pharmacy' see PARA 379 note 6.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1)(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5 As to the meaning of 'controlled locality' see PARA 377.

6 As to the meaning of 'distance selling chemist' see PARA 361 note 20.

7 As to the specified conditions see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(3), (10).

- 8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1)(b).
- 9 As to the meaning of 'reserved location' see PARA 379 note 5.
- 10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1)(c)(i).
- 11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1)(c)(ii).
- 12 See note 7.
- 13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1)(c).
- 14 As to the meaning of 'doctor' see PARA 345 note 4.
- 15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1)(d). For these purposes 'residual premises approval' has the same meaning as in reg 66(9) (see PARA 409) and a person is a 'temporary resident' if he intends to stay in the household for more than 24 hours but not longer than three months: reg 60(1)(d). As to the provision of services to temporary residents see also reg 60(11). As to the meaning of 'month' see PARA 28 note 16.
- 16 As to the meaning of 'writing' see PARA 7 note 2.
- 17 For these purposes a doctor must be a contractor providing primary medical services under a general medical services contract, the National Health Service Act 2006 s 83(2)(b) (see PARA 241) or s 92 (see PARA 267), engaged or employed by such a contractor, or engaged by a primary care trust under s 83(2)(a) (see PARA 241) to provide primary medical services, on whose patient list the patient making the request is included: see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1), (2); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'general medical services contract' see PARA 242. As to primary medical services see PARA 241. As to the meaning of 'patient list' see PARA 362 note 9.
- 18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1). As to the meaning of 'pharmaceutical services' see PARA 345 note 5.
- 19 In the case of a patient falling within head (2) or (3) in the text or practice premises in the case of a patient falling within head (1) in the text: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(4)(a) (amended by SI 2005/1015). 'Listed premises' means premises in relation to which premises approval has been granted and has effect and from which a doctor may dispense, being premises specified in relation to the doctor in the dispensing doctors list pursuant to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 68(4) (see PARA 410): reg 2(1). 'Practice premises', in relation to a provider of primary medical services, means the address at which such services are to be provided: see reg 2(1).
- 20 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(4)(a). Subject to reg 66 (see PARA 409), an arrangement made by a primary care trust under reg 60(4)(a): (1) has effect from the date of the patient's request in writing (reg 60(5)(a)); and (2) enables that doctor, any other doctor who is party to the same general medical services contract or arrangements for the provision of primary medical services, any other doctor who is employed or engaged by the same contractor, or any doctor engaged by a primary care trust to provide primary medical services within the same practice, to provide pharmaceutical services at listed premises for the patient so long as the arrangement remains in effect (see reg 60(5)(b)). Notwithstanding reg 60(4), where a drug or appliance is one for which a doctor is entitled to an additional payment if he provides it, he may, with the consent of the patient, instead of providing it himself, order it by issuing a prescription to the patient: see reg 60(9).
- 21 In the case of a patient falling within head (2) or (3) in the text or practice premises in the case of a patient falling within head (1) in the text: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(4)(b) (amended by SI 2005/1015).
- 22 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(4)(b) (amended by SI 2006/3373). A primary care trust must not so require a doctor to provide pharmaceutical services at listed premises or practice premises to a person on the relevant patient list for that doctor if that doctor satisfies the trust, or on appeal, the Secretary of State that: (1) he does not normally provide pharmaceutical services under reg 60 (reg 60(6)(a) (amended by SI 2005/1015)); or (2) in the case of a person to whom head (2), (3), or (4) in the text applies, the person would not have serious difficulty, by reason of distance or inadequacy of means of communication, in obtaining drugs and appliances from a pharmacy (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(6)(b)). See also note 20. As to the making and determination of

appeals made under reg 60(6) see reg 60(12)-(15) (amended by SI 2006/3373). As to the Secretary of State see PARA 6 note 8.

23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(7)(a).

24 le the provisions of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1): see the text to notes 1-18.

25 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(7)(b). A notice under reg 60(7)(b): (1) is subject to any postponement or termination of arrangements for the provision of pharmaceutical services to that person by that doctor made under reg 20(2) (see PARA 366), reg 29(18)(b) (see PARA 375), reg 32(10)(b) (see PARA 378) or reg 38(14)(b) (see PARA 383) (reg 60(8)(a)); and (2) must not be given pending any appeal against a decision by a primary care trust to postpone the making or termination of such arrangements, or where reg 31(9) (see PARA 377) so requires (reg 60(8)(b)).

## **UPDATE**

### **404 Arrangements for provision of pharmaceutical services by doctors**

TEXT AND NOTES--SI 2005/641 reg 60(8A)-(8D) added: SI 2009/2205.

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#### **405. Outline consent and premises approval.**

A doctor<sup>1</sup> wishing to be granted the right to provide pharmaceutical services<sup>2</sup> by arrangement with a primary care trust<sup>3</sup> to patients residing in an area, may apply<sup>4</sup> to the primary care trust in writing<sup>5</sup> for consent (known as 'outline consent') specifying the area in relation to which he wishes the outline consent to be granted<sup>6</sup>, and approval of any premises from which he wishes to dispense (known as 'premises approval')<sup>7</sup>.

When granting outline consent, the primary care trust must determine when the outline consent is to take effect<sup>8</sup>. Premises approval takes effect when the relating outline consent takes effect<sup>9</sup>. The primary care trust may refuse an application in respect of some of the premises for which approval is sought (notwithstanding that it would, if determining the application for those premises in isolation, grant it) where the number of applications for premises approval are such, or the circumstances in which they are made are such, that to grant all or some of them would prejudice the proper provision of primary medical services<sup>10</sup>, dispensing services, local pharmaceutical services<sup>11</sup> or pharmaceutical services in any locality<sup>12</sup>.

An outline consent ceases to have effect: (1) where no arrangement for the provision of pharmaceutical services<sup>13</sup> has been made pursuant to it within 12 months<sup>14</sup> from its taking effect<sup>15</sup>; (2) where more than 12 months have elapsed since the last provision of drugs and appliances<sup>16</sup> under such an arrangement<sup>17</sup>; (3) in accordance with certain statutory provisions<sup>18</sup>; or (4) where there is a practice amalgamation and following the amalgamation there are no practice premises which have premises approval<sup>19</sup>. Premises approval ceases to have effect in relation to: (a) listed premises which have permanently ceased to be practice premises<sup>20</sup>; (b) listed premises which have not been used for dispensing by any doctor authorised to dispense from those premises for six months or such longer period as the primary care trust may for good cause allow<sup>21</sup>; (c) listed premises where a doctor who has outline consent to dispense from those premises has notified the primary care trust that all the doctors who have authority to dispense from those premises have ceased to do so<sup>22</sup>; (d) listed premises where there is no doctor with premises approval in respect of them remaining on the dispensing doctor list<sup>23</sup>; or (e) listed premises which were granted premises approval<sup>24</sup>, where no practice amalgamation takes place within the specified period<sup>25</sup>. Premises approval also ceases to have effect where the relating outline consent ceases to have effect<sup>26</sup>.

1 As to the meaning of 'doctor' see PARA 345 note 4.

2 I.e. under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(1) (b) or (c): see PARA 404. As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

3 As to primary care trusts see PARA 111.

4 An application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 61(1) must be determined in accordance with reg 61(3) (see the text to notes 10-12), and reg 18 (see PARA 406), reg 20(2) (see PARA 366), regs 33, 34 (see PARA 379), regs 36-38 (see PARAS 381-383) and reg 62 (see the text to note 8): reg 61(2) (amended by SI 2006/3373). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5 As to the meaning of 'writing' see PARA 7 note 2.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 61(1)(a).



- 7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 61(1)(b). The application must specify: (1) the premises for which he wishes to be granted premises approval and whether those premises are listed premises in relation to a different area (reg 61(1)(b)(i)); and (2) whether the application arises because a practice amalgamation has taken place or will be taking place and, if so, the names of the doctors or contractors participating in the amalgamation (reg 61(1)(b)(ii) (amended by SI 2006/3373)). As to the meaning of 'listed premises' see PARA 404 note 19. As to the meaning of 'practice amalgamation' see PARA 409 note 1.
- 8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 62(1). As to the making of such determinations see reg 62(2)-(15).
- 9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 62(16).
- 10 As to primary medical services see PARA 241.
- 11 As to the meaning of 'local pharmaceutical services' see PARA 359 note 6.
- 12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 61(3).
- 13 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60: see PARA 404.
- 14 As to the meaning of 'month' see PARA 28 note 16.
- 15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(1)(a).
- 16 As to the meaning of 'drugs' see PARA 353 note 7. As to the meaning of 'appliance' see PARA 345 note 3.
- 17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(1)(b).
- 18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(1)(c). The provisions are reg 62(10) or (13): see note 8.
- 19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(1)(d).
- 20 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(2)(a). As to the meaning of 'practice premises' see PARA 404 note 19.
- 21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(2)(b).
- 22 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(2)(c).
- 23 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(2)(d). As to the meaning of 'dispensing doctor list' see PARA 410.
- 24 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 66(3): see PARA 409.
- 25 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(2)(e). The specified period is that specified in reg 66(7): see PARA 409.
- 26 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 63(3).

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**406. Refusal: outline consent and premises approval where patients in a controlled locality but not in a reserved location.**

Where: (1) the application for outline consent<sup>1</sup> is in relation to an area which is a controlled locality<sup>2</sup> and the primary care trust<sup>3</sup> has determined<sup>4</sup>, or on appeal it is determined<sup>5</sup>, that the area to which the applicant wishes to provide pharmaceutical services<sup>6</sup> is not in a reserved location<sup>7</sup>; or (2) the application for premises approval is for premises from which the applicant wishes to be authorised to dispense to patients living in the area referred to in head (1) above<sup>8</sup>, the primary care trust<sup>9</sup>:

- 263 (a) must refuse an application to the extent that it is of the opinion that to grant it would prejudice the proper provision of primary medical services<sup>10</sup>, dispensing services, local pharmaceutical services<sup>11</sup> or pharmaceutical services in any locality<sup>12</sup>;
- 264 (b) must refuse an application in relation to any part of the area specified in the application which is not in a controlled locality<sup>13</sup>, or which is within 1.6 kilometres of any pharmacy<sup>14</sup>;
- 265 (c) must refuse an application in relation to any premises from which the doctor<sup>15</sup> wishes to be authorised to dispense and which are within 1.6 kilometres of any pharmacy<sup>16</sup>; and
- 266 (d) may refuse an application in a case where two or more determinations fall to be made which relate to each other<sup>17</sup> (notwithstanding that it would, if determining that application in isolation, grant it) where the number of applications is such, or the circumstances in which they are made are such, that to grant all of them or more than one of them would prejudice the proper provision of primary medical services, dispensing services, local pharmaceutical services or pharmaceutical services in any locality<sup>18</sup>;

and any refusal of such an application may relate to all or any part of the area within the controlled locality<sup>19</sup>.

1 As to applications for outline consent and premises approval see PARA 405.

2 As to the meaning of 'controlled locality' see PARA 377.

3 As to primary care trusts see PARA 111.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(1)(a)(i) (reg 18(1) substituted by SI 2005/1501). Such a determination is one under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 35: see PARA 379. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(1)(a)(ii) (as substituted: see note 4). As to such appeals see PARA 383.

6 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

- 7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(1)(a) (as substituted: see note 4).
- 8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(1)(b) (as substituted: see note 4).
- 9 le subject to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 25, 26 (see PARAS 371, 372) and reg 65(4) (see PARA 408): reg 18(2) (amended by SI 2005/1501).
- 10 As to primary medical services see PARA 241.
- 11 As to the meaning of 'local pharmaceutical services' see PARA 359 note 6.
- 12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(2)(a).
- 13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(2)(b)(i).
- 14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(2)(b)(ii). As to the meaning of 'pharmacy' see PARA 379 note 6.
- 15 As to the meaning of 'doctor' see PARA 345 note 4.
- 16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(2)(c).
- 17 le a case to which the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 36(9) applies: see PARA 381.
- 18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(2)(d).
- 19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 18(2).

## **UPDATE**

### **406 Refusal: outline consent and premises approval where patients in a controlled locality but not in a reserved location**

TEXT AND NOTES 3-7--Words from 'and primary care trust' to 'reserved location' omitted: SI 2005/641 reg 18(1)(a) (amended by SI 2010/914).

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#### **407. Change of premises before outline consent takes effect.**

Where outline consent<sup>1</sup> has been granted but has not yet<sup>2</sup> taken effect<sup>3</sup>, and before the provisional date<sup>4</sup> the doctor<sup>5</sup> who made the application<sup>6</sup> intends to change the premises from which he wishes to dispense<sup>7</sup>, he may apply to the primary care trust<sup>8</sup> in writing<sup>9</sup> for the trust to determine whether premises approval<sup>10</sup> should be given in relation to the new premises<sup>11</sup>. If the primary care trust is satisfied that the change of premises is a minor relocation it may grant premises approval for those premises, but if it is not so satisfied the application for the premises approval to be given in relation to the new premises must be refused<sup>12</sup>. The determination by the primary care trust may be appealed to the Secretary of State<sup>13</sup> by the applicant<sup>14</sup>.

1 As to the meaning of 'outline consent' see PARA 405.

2 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 62: see PARA 405.

3 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 64(1)(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4 'Provisional date' must be interpreted in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 62(6)-(8) (see PARA 404 note 8): reg 2(1).

5 As to the meaning of 'doctor' see PARA 345 note 4.

6 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 61: see PARA 405.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 64(1)(b).

8 As to primary care trusts see PARA 111.

9 As to the meaning of 'writing' see PARA 7 note 2.

10 'Premises approval' has the meaning given to it in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 61(1)(b) (see PARA 405) and includes temporary premises approval granted under reg 65(9) (see PARA 408) or reg 66(4) (see PARA 409) and residual premises approval under reg 66(9) (see PARA 409): reg 2(1).

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 64(1). The primary care trust must make the determination in accordance with reg 64(2) (see the text to note 12): reg 64(1).

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 64(2). The primary care trust must notify those persons to whom notice of the application under reg 61 (see PARA 405) was required to be given and applicants in relation to the outstanding applications, of its determination: reg 64(3). As to the meaning of 'person' see PARA 17 note 2. 'Outstanding application' except where the context otherwise requires has the meaning given to it in reg 62(5) (see PARA 404 note 8): reg 2(1).

13 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38: see PARA 383. As to the Secretary of State see PARA 6 note 8.

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 64(4).

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#### **408. Additional and new premises after outline consent has taken effect.**

A doctor<sup>1</sup> who has been granted outline consent<sup>2</sup> which has taken effect<sup>3</sup>, or provides pharmaceutical services<sup>4</sup> in reliance on previous arrangements<sup>5</sup>, and who wishes to be granted premises approval<sup>6</sup> in relation to additional premises<sup>7</sup> may apply to all the appropriate primary care trusts<sup>8</sup>, and the application must be determined by the relevant primary care trust<sup>9</sup>. A doctor wishing to be granted premises approval in relation to new premises where he wishes to dispense instead of listed premises<sup>10</sup> may apply to all the appropriate primary care trusts and the application must be determined by the relevant primary care trust<sup>11</sup>. A determination by the relevant primary care trust may be appealed to the Secretary of State<sup>12</sup> by the applicant and any of the persons notified<sup>13</sup> of the determination apart from any local pharmaceutical committee<sup>14</sup> or any local medical committee<sup>15</sup>.

When granted in relation to new or additional premises, the premises approval takes effect from the date of notification of the grant<sup>16</sup>. However, where the premises approval is granted in relation to additional premises<sup>17</sup>, and in relation to the premises for which the approval is granted there were, at the date of the grant, outstanding applications<sup>18</sup>, the premises approval provisionally takes effect on the date which is the day after the end of a period of one year, or such longer period (not exceeding three months) as the relevant primary care trust may for good cause allow before the expiration of that year, from the final resolution of any outstanding application<sup>19</sup>.

The relevant primary care trust may grant temporary premises approval to a doctor who has outline consent and premises approval in relation to additional or new premises where it considers it desirable to do so to secure the adequate provision of pharmaceutical services in the area served by the premises, and renew any such temporary approval granted, to secure such adequate provision<sup>20</sup>. Temporary premises approval may be granted for a period not exceeding 12 months, and may be renewed for a further period not exceeding three months<sup>21</sup>.

1 As to the meaning of 'doctor' see PARA 345 note 4.

2 As to the meaning of 'outline consent' see PARA 405.

3 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(1)(a). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

4 I.e. in reliance on the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60(3)(b): see PARA 404. As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(1)(b).

6 As to the meaning of 'premises approval' see PARA 407 note 10.

7 I.e. premises in addition to those in respect of which premises approval has been given: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(1).

8 The 'appropriate primary care trusts' are those who hold dispensing doctor lists on which the doctor making the application is included: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(2)(a). As to primary care trusts see PARA 111. As to the meaning of 'dispensing doctor list' see PARA 410.

9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(1)(i). The 'relevant primary care trust' is the primary care trust in whose area the additional premises are situated: reg 65(2)(b). Regulations 18 (see PARA 406), 20(2) (see PARA 366), 34 (see PARA 379), 36(1), (3)-(9) (see PARA 381), 37 (see PARA 382), 38 (see PARA 383), 61 (see PARA 405) and 65 apply to such an application as they apply to an application for outline consent under reg 61 (see PARA 405): reg 65(1)(ii) (amended by SI 2006/3373).

10 As to the meaning of 'listed premises' see PARA 404 note 19.

11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(3). The relevant primary care trust must: (1) grant the application where (a) the new premises are less than 500 metres by the most practicable route on foot from the listed premises which they are to replace (reg 65(4)(a)(i)); or (b) the primary care trust is otherwise satisfied that granting the application would not result in a significant change in the arrangements for the provision of pharmaceutical services or dispensing services to any part of a controlled locality (reg 65(4)(a)(ii) (amended by SI 2006/3373)), provided that no further applications may be granted under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(4)(a) for a period of 12 months beginning with the date on which the doctor commenced providing services from the new premises unless the trust for good cause allows (reg 65(4)(a)); or (2) in any other case determine the application in accordance with reg 65(1) (see the text to note 9) as if the references to additional premises were to new premises (reg 65(4)(b)). The relevant primary care trust must notify its determination under reg 65(4)(a) to the persons to whom the notice is required to be given under reg 33(2) and (3) (see PARA 379) and to the appropriate primary care trusts: reg 65(5) (amended by SI 2006/3373). As to the meaning of 'controlled locality' see PARA 377. As to the meaning of 'month' see PARA 28 note 16.

12 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38: see PARA 383. As to the Secretary of State see PARA 6 note 8.

13 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(5): see note 11.

14 As to local pharmaceutical committees see PARA 351.

15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(6) (amended by SI 2006/3373). As to local medical committees see PARA 272.

16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(7). For this purpose the date of the notification of a grant of any application is: (1) where no appeal is made under reg 65(6) (see the text to note 15) against the decision of the relevant primary care trust, the date after the expiry of the period of 30 days beginning with the date on which notice of that decision is given under reg 65(5) (see note 11) (reg 65(7)(a) amended by SI 2006/3373); or (2) where such an appeal is made, the date on which the Secretary of State gives notice of his decision under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 38 (see PARA 383) (reg 65(7)(b)).

17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(8)(a).

18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(8)(b) (amended by SI 2006/3373). As to the meaning of 'outstanding application' see PARA 407 note 12.

19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(8) (amended by SI 2006/3373).

20 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(9) (amended by SI 2006/3373). Where the trust does so it must: (1) notify those persons to whom notice of the application under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 61 (see PARA 405) was required to be given under reg 32(2), (3) (see PARA 378) and applicants in relation to outstanding applications (reg 65(9)(a)); (2) state the period during which the temporary premises approval is to apply (reg 65(9)(b)); and (3) include those premises in the dispensing doctors list in relation to that doctor (reg 65(9)(c)).

21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(10).

## UPDATE

### 408 Additional and new premises after outline consent has taken effect

TEXT AND NOTES--SI 2005/641 reg 65 does not apply to an application by a doctor of the type mentioned in reg 65(1)(a) or (b) for temporary premises approval in relation to premises in addition to those in respect of which premises approval has already been

given under regs 60-69, or temporary premises approval in relation to new premises where the doctor wishes to dispense instead of listed premises, requiring a temporary amendment to a dispensing doctor list which a primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 65A(1) (regs 2(5), (6), 65A added by SI 2009/2205). In the circumstances described in reg 65A(1), the primary care trust may grant the application, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the applicant may revert to the overridden premises approval before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 65A(2). There is no right of appeal under SI 2005/641 in respect of a decision to grant or refuse an application under reg 65A(1) or to extend or curtail, or not to extend or curtail, temporary premises approval under head (1) above: reg 65A(3). 'Emergency requiring the flexible provision of pharmaceutical services' means an emergency declared by means of a direction to primary care trusts under the National Health Service Act 2006 s 8(1) (see PARA 16) to the effect that, as a result of the threatened damage to human welfare caused or which may be caused by the illness designated in the direction, primary care trusts must for a specified period exercise, or where a discretion is conferred, consider exercising, one or more of their functions under SI 2005/641 reg 7A (see PARAS 354-370), 60(8A) (see PARA 404) or reg 65A, Sch 1 para 25A or Sch 3 para 13A (see PARA 347), subject to any conditions or limitations set out in the direction: reg 2(5). Where a direction of the type mentioned in reg 2(5) is given and the Secretary of State issues a further direction changing the specified period of the emergency, the duration of the emergency is to be construed in accordance with the specified period as so changed: reg 2(6).

Where, during an emergency requiring the flexible provision of pharmaceutical services, arrangements for the provision of pharmaceutical services are overridden by temporary arrangements (1) any proceedings with regard to the overridden arrangements are unaffected by that overriding, although they may need to be stayed during the emergency for other reasons; and (2) if as a result of those proceedings, the overridden arrangements require amendment before the end of the temporary arrangements, when the emergency ends, the reversion to the overridden arrangement are to be to the overridden arrangements as amended as a result of those proceedings: SI 2005/641 reg 69B (added by SI 2009/2205).

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#### **409. Practice amalgamations.**

If, following a practice amalgamation<sup>1</sup>, all the practice premises<sup>2</sup> of the new practice are premises in respect of which premises approval<sup>3</sup> was in effect immediately prior to the practice amalgamation, then outline consent<sup>4</sup> and premises approval continue to have effect<sup>5</sup>.

Where there is, or will be, a practice amalgamation and none or not all of the practice premises of the new amalgamating practice had been premises in respect of which premises approval was in effect immediately prior to the practice amalgamation, a doctor who is a party to the practice amalgamation and who has been granted outline consent and premises approval which is in effect either immediately before the practice amalgamation or the date of the application, may make an application for premises approval<sup>6</sup>. Such an application may be made before or after the practice amalgamation takes place, and where the practice amalgamation takes effect before the application has been finally determined any premises approval in effect at the date of the practice amalgamation has effect from the date of the amalgamation as if it were a temporary approval<sup>7</sup> for a period stated by the primary care trust not exceeding one year<sup>8</sup>; and the new practice has temporary premises approval from the date of the practice amalgamation to dispense from any premises mentioned in the application for a period stated by the primary care trust not exceeding one year<sup>9</sup>. Where an application was granted before the practice amalgamation takes place, premises approval takes effect from the date of the practice amalgamation<sup>10</sup>. Where an application for premises approval is refused either for all or any of the premises specified in the application, whether before or after the practice amalgamation takes place, the doctors who had premises approval prior to making the application, and any other doctor in the new practice after that date, have residual premises approval<sup>11</sup>.

1 A 'practice amalgamation' occurs where either: (1) two or more providers of primary medical services merge (National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 66(1)(a)); or (2) a contractor under a general medical services contract or an arrangement made under the National Health Service Act 2006 s 92 (see PARA 267) or s 83(2)(b) (see PARA 241), or a doctor who provides primary medical services for a practice established by a primary care trust under s 83(2)(a) (see PARA 241), is employed or engaged by another such contractor or by a primary care trust to provide services within another such practice (see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 66(1)(b)), as a result of which two or more patient lists are combined (reg 66(1)). As to primary medical services see PARA 241. As to the meaning of 'general medical services contract' see PARA 242. As to the meaning of 'doctor' see PARA 345 note 4. As to primary care trusts see PARA 111. As to the meaning of 'patient list' see PARA 362 note 9. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

2 As to the meaning of 'practice premises' see PARA 404 note 19.

3 As to the meaning of 'premises approval' see PARA 407 note 10.

4 As to the meaning of 'outline consent' see PARA 405.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 66(2).

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 66(3) (amended by SI 2006/3373). The application must be determined as provided in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65 (see PARA 408) as if it were an application from a doctor with premises approval to have the right to dispense from: (1) additional premises where the premises approval is required for additional premises as defined in reg 65(1) (see PARA 408) (reg 66(3)(a)); or (2) new premises



where the premises approval is required for new premises as defined in reg 65(3) (see PARA 408) (reg 66(3)(b)), and the primary care trust may grant temporary premises approval under reg 65(9) (see PARA 408) (reg 66(3)).

7     le under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 65(9): see PARA 408.

8     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 66(4)(a).

9     National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 66(4)(b). When the practice amalgamation takes effect the doctors must notify all primary care trusts in whose area the amalgamated practice is situated that the practice amalgamation has taken place: reg 66(5).

10    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 66(6). However, where an application was made before the practice amalgamation takes place and the practice amalgamation has not taken place before the end of a period of one year beginning with the date that premises approval was granted under reg 66(3) (see the text to note 6), that grant lapses: reg 66(7).

11    National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 66(8). 'Residual premises approval' means premises approval to dispense: (1) from premises in respect of which the doctor or another doctor in his practice had premises approval at the time of the application in relation to the practice amalgamation (reg 66(9)(a)); and (2) to a patient for whom the doctor making the application is authorised to provide pharmaceutical services on the date the application was refused, but excluding any such patient who ceases to be a patient mentioned in reg 60(1)(b) or (c) (see PARA 404) (reg 66(9)(b)(i)), or a patient who is not such a patient but who is mentioned in reg 60(1)(a) or (d) (see PARA 404) and for whom the doctor making the application is authorised to provide pharmaceutical services on the date the application was refused (reg 66(9)(b)(ii)). For the purposes of reg 66(9), reg 60(1)(b) or (c) must be read as if the words 'and one of the conditions specified in reg 60(3) is satisfied in his case' were omitted: reg 66(10). As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

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#### **410. Dispensing doctor lists.**

A primary care trust<sup>1</sup> must prepare, maintain and publish a list, to be called the 'dispensing doctor list', of the names of those doctors<sup>2</sup> authorised or required by the primary care trust<sup>3</sup> to provide pharmaceutical services<sup>4</sup> to their patients and who are actually doing so<sup>5</sup>.

A primary care trust must remove the name of a doctor from its dispensing doctor list where the trust determines that: (1) the doctor has died<sup>6</sup>; (2) the doctor is no longer performing primary medical services<sup>7</sup> within the area of the trust<sup>8</sup>; (3) more than 12 months<sup>9</sup> have elapsed since the doctor last provided drugs<sup>10</sup> or appliances<sup>11</sup> under an arrangement made<sup>12</sup> with the trust<sup>13</sup>; or (4) the doctor has been removed from the medical performers list<sup>14</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'doctor' see PARA 345 note 4.

3 Ie under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60: see PARA 404.

4 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 68(1). As to the content of the list see reg 68(2)-(4). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 69(a).

7 As to primary medical services see PARA 241.

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 69(b).

9 As to the meaning of 'month' see PARA 28 note 16.

10 As to the meaning of 'drugs' see PARA 353 note 7.

11 As to the meaning of 'appliance' see PARA 345 note 3.

12 Ie pursuant to the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 60: see PARA 404.

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 69(c).

14 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 69(d). 'Medical performers list' means a list of doctors prepared and published pursuant to the National Health Service (Performers Lists) Regulations 2004, SI 2004/585, reg 3(1) (see PARA 249): National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1).

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## (D) REMUNERATION

### **411. Remuneration for providing pharmaceutical services.**

The remuneration to be paid to persons<sup>1</sup> who provide pharmaceutical services<sup>2</sup> must be determined by determining authorities<sup>3</sup>. Determining authorities may also determine the remuneration to be paid to persons who provide those services in respect of the instruction of any person in matters relating to those services<sup>4</sup>.

Determining authorities are the Secretary of State<sup>5</sup>, and, so far as authorised by him to exercise the functions<sup>6</sup> of determining authorities, any primary care trust<sup>7</sup> or other person appointed by him in an instrument of appointment<sup>8</sup>.

Regulations may<sup>9</sup>:

- 267 (1) make provision about determining remuneration and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations<sup>10</sup> (including requirements as to consultation and publication)<sup>11</sup>;
- 268 (2) provide that determinations may be made by reference to any of: (a) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or will be fixed or determined, otherwise than by way of a determination<sup>12</sup>; (b) scales, indices or other data of any description specified in the regulations<sup>13</sup>;
- 269 (3) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates<sup>14</sup>;
- 270 (4) provide that any determination which does not specify a date as referred to in head (3) above has effect in relation to remuneration in respect of a period beginning if it is required to be published, on the date of publication<sup>15</sup>, or if it is not so required, on the date on which it is made<sup>16</sup>.

On a determination of remuneration<sup>17</sup> the determining authority may adjust the amount of the remuneration in either or both of the following ways: (i) by deducting an amount to take account of any overpayment<sup>18</sup>; (ii) by adding an amount to take account of any underpayment<sup>19</sup>, if it appears to the authority that an earlier determination was unsatisfactory<sup>20</sup>. If the later determination is of remuneration for a category of services, it is immaterial whether the earlier determination was of remuneration for the same category of services or for any other category of services falling within the same description<sup>21</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 Ie under the National Health Service Act 2006 Pt 7 (ss 126-168). As to the meaning of 'pharmaceutical services' see PARA 339.

- 3 National Health Service Act 2006 s 164(1). As to determinations see PARA 412. As to the equivalent provision to the National Health Service Act 2006 s 164 in relation to Wales see the National Health Service (Wales) Act 2006 s 88. As to the meaning of 'Wales' see PARA 6 note 2.
- 4 National Health Service Act 2006 s 164(2).
- 5 National Health Service Act 2006 s 164(3)(a). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.
- 6 As to the meaning of 'functions' see PARA 6 note 3.
- 7 As to primary care trusts see PARA 111.
- 8 National Health Service Act 2006 s 164(3)(b), (4). An instrument of appointment may contain requirements with which a determining authority appointed by that instrument must comply in making determinations (s 164(5)(a)), and may be contained in regulations (s 164(5)(b)). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. As to such regulations see note 9.
- 9 As to the provision which has been made see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, regs 56, 56A (reg 56 substituted by SI 2007/674; National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 56A added by SI 2008/683). The aggregate of the determinations made by the Secretary of State, acting as a determining authority, is known as the 'drug tariff': see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 56(a) (as so substituted). The Secretary of State must publish the drug tariff, and any amendments to it, in such format and at such intervals as he thinks fit: see reg 56(f) (as so substituted). The National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, have effect under the National Health Service Act 2006 s 164 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.
- 10 A reference in the National Health Service Act 2006 s 164 or s 165 (see PARA 412) to a 'determination' is to a determination of remuneration under s 164: s 164(10).
- 11 National Health Service Act 2006 s 164(6). This provision is expressed to be subject to s 164 and s 165: see PARA 412.
- 12 National Health Service Act 2006 s 164(7)(a).
- 13 National Health Service Act 2006 s 164(7)(b). Where regulations provide as mentioned in s 164(7)(b), they may provide that any determination which falls to be made by reference to a scale, index or other data may be made by reference to the scale, index or data in the form current at the time of the determination (s 164(8)(a)), and in any subsequent form taking effect after that time (s 164(8)(b)).
- 14 National Health Service Act 2006 s 164(9)(a).
- 15 National Health Service Act 2006 s 164(9)(b)(i).
- 16 National Health Service Act 2006 s 164(9)(b)(ii).
- 17 Ie for any of the descriptions of services mentioned in the National Health Service Act 2006 s 164(1) (see the text to notes 1-3) or any category of services falling within such a description: National Health Service (Amendment) Act 1986 s 4(1) (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 93, 94(a)).
- 18 National Health Service (Amendment) Act 1986 s 4(1)(a). 'Overpayment' means the aggregate of any amounts which were properly paid under the earlier determination but which in the authority's opinion were paid because that determination was unsatisfactory, exclusive of any portion of that aggregate in respect of which a deduction under s 4(1) has already been made: s 4(4). 'Earlier determination' means an earlier determination of remuneration of the same or other persons for services of the same description or any category of services falling within that description and includes such a determination made before 7 November 1986 (ie the date of the passing of the National Health Service (Amendment) Act 1986): s 4(4). If an amount falls to be deducted by virtue of s 4(1)(a), the determining authority, in fixing amounts of remuneration for persons to whom the determination relates, may have regard to the period within which they first provided services of the description to which it relates: s 4(3).
- 19 National Health Service (Amendment) Act 1986 s 4(1)(b). 'Underpayment' means the aggregate of any amounts which in the authority's opinion would have been paid under the earlier determination if that

determination had not been unsatisfactory, exclusive of any portion of that aggregate in respect of which an addition under s 4(1) has already been made: s 4(4).

20 National Health Service (Amendment) Act 1986 s 4(1). An earlier determination is to be taken to have been unsatisfactory only if, had it fallen to the authority to make it at the time of the later determination, the authority would have made it on the basis of different information: s 4(2).

21 National Health Service (Amendment) Act 1986 s 4(5) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 93, 94(b)).

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#### 412. Determinations.

Before a determination<sup>1</sup> is made by the Secretary of State<sup>2</sup> which relates to all persons<sup>3</sup> who provide pharmaceutical services<sup>4</sup>, or a category of such services, he must consult a body appearing to him to be representative of persons to whose remuneration the determination would relate<sup>5</sup>, and may consult such other persons as he considers appropriate<sup>6</sup>.

Determinations may: (1) make different provision for different cases, including different provision for any particular case, class of case or area<sup>7</sup>; (2) be made in more than one stage<sup>8</sup>, made by more than one determining authority<sup>9</sup>, varied or revoked by subsequent determinations<sup>10</sup>; (3) in particular, provide that the whole or any part of the remuneration is payable only if the determining authority is satisfied as to certain conditions<sup>11</sup>, or must be applied for certain purposes or is otherwise subject to certain conditions<sup>12</sup>.

Remuneration<sup>13</sup> may be determined from time to time and may consist of payments by way of salary<sup>14</sup>, fees<sup>15</sup>, allowances<sup>16</sup>, and reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction<sup>17</sup>. At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later time<sup>18</sup>. Any determination may be made only after taking into account all the matters which are considered to be relevant by the determining authority<sup>19</sup>.

1 As to the meaning of 'determination' see PARA 411 note 10.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'pharmaceutical services' see PARA 339.

5 National Health Service Act 2006 s 165(1)(a). As to the equivalent provision to the National Health Service Act 2006 s 165 in relation to Wales see the National Health Service (Wales) Act 2006 s 89. As to the meaning of 'Wales' see PARA 6 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

6 National Health Service Act 2006 s 165(1)(b).

7 National Health Service Act 2006 s 165(2).

8 National Health Service Act 2006 s 165(3)(a).

9 National Health Service Act 2006 s 165(3)(b). As to determining authorities see PARA 411.

10 National Health Service Act 2006 s 165(3)(c). A determination may be varied to correct an error (s 165(4)(a)), or where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact (s 165(4)(b)).

11 National Health Service Act 2006 s 165(5)(a).

12 National Health Service Act 2006 s 165(5)(b).

13 Ie remuneration under the National Health Service Act 2006 s 164: see PARA 411.

14 National Health Service Act 2006 s 165(6)(a).

15 National Health Service Act 2006 s 165(6)(b).

16 National Health Service Act 2006 s 165(6)(c).

17 National Health Service Act 2006 s 165(6)(d).

18 National Health Service Act 2006 s 165(7). The matters which may be reserved include in particular the amount of remuneration to be paid in particular cases (s 165(8)(a)), and whether any remuneration is to be paid in particular cases (s 165(8)(b)).

19 National Health Service Act 2006 s 165(9). Such matters may include in particular: (1) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of pharmaceutical services or of any category of pharmaceutical services (s 165(10)(a)); (2) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services (s 165(10)(b)); (3) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons (s 165(10)(c)); (4) the extent to which it is desirable to encourage the provision, either generally or in particular places, of pharmaceutical services or the category of pharmaceutical services to which the determination will relate (s 165(10)(d)); (5) the desirability of promoting pharmaceutical services which are economic and efficient (s 165(10)(e)(i)), and of an appropriate standard (s 165(10)(e)(ii)). If the determination is of remuneration for a category of pharmaceutical services, the reference in s 165(10)(a) to a category of pharmaceutical services is a reference to the same category of pharmaceutical services or to any other category of pharmaceutical services falling within the same description: s 165(11).

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### **413. Claims and overpayments.**

Any claim for fees, allowances or other remuneration by chemists<sup>1</sup> or doctors<sup>2</sup> must be made in accordance with the provisions of the drug tariff<sup>3</sup> or, as the case may be, in accordance with any arrangements for claiming them included in a determination<sup>4</sup> made by the primary care trust<sup>5</sup>. Where it considers that a payment has been made to a chemist or doctor in circumstances when it was not due, the primary care trust, except to the extent that the Secretary of State<sup>6</sup>, on the application of the trust, directs otherwise, must draw the overpayment to the attention of the chemist or the doctor; and where the overpayment is admitted by him<sup>7</sup>, or where, in the case of a chemist, the overpayment is not so admitted but<sup>8</sup> the trust or the Secretary of State<sup>9</sup> decides that there has been an overpayment<sup>10</sup>, the amount overpaid is recoverable<sup>11</sup>, either by deduction from the remuneration of the doctor or chemist or in some other manner<sup>12</sup>. Recovery of an overpayment is without prejudice to the investigation of an alleged breach of the terms of service<sup>13</sup>.

1 As to the meaning of 'chemist' see PARA 349 note 1.

2 As to the meaning of 'doctor' see PARA 345 note 4.

3 As to the meaning of 'drug tariff' see PARA 411 note 9.

4 As to determinations see PARAS 411, 412.

5 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 57(1) (amended by SI 2007/674). As to primary care trusts see PARA 111. As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

6 As to the Secretary of State see PARA 6 note 8.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 57(2)(a).

8 I.e. the matter having been referred for investigation under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(1): see PARA 623.

9 I.e. on appeal under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(1)(c): see PARA 632.

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 57(2)(b).

11 I.e. subject to any determination of the Secretary of State pursuant to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 11(1): see PARA 634.

12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 57(2).

13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 57(3). As to terms of service see PARA 347.



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#### **414. Payments to suspended chemists.**

The primary care trust<sup>1</sup> must make payments to any chemist<sup>2</sup> who is suspended<sup>3</sup> in accordance with the Secretary of State's<sup>4</sup> determination in relation to such payments<sup>5</sup>. The Secretary of State must make the determination after consultation with such organisations as he may recognise as representing chemists with whom arrangements for the provision of pharmaceutical services<sup>6</sup> exist, and it must be published with the drug tariff<sup>7</sup>. The determination may be amended from time to time by the Secretary of State after consultation with those organisations, and any amendments must also be published in the drug tariff<sup>8</sup>. The Secretary of State's determination may include provision that payments in accordance with the determination are not to exceed a specified amount in any specified period<sup>9</sup>. If a payment is made in accordance with a determination, but the payee was not entitled to receive all or any part of it, if the amount to which he was not entitled has not been recovered by other means, it may be recovered by the primary care trust as a civil debt<sup>10</sup>.

If a chemist is dissatisfied with a decision of a primary care trust: (1) to refuse to make a payment to, or in respect of, him in accordance with a determination<sup>11</sup>; (2) to make a payment to, or in respect of, him in accordance with a determination, but at a lower level than the level which he considers to be correct<sup>12</sup>; or (3) in respect of recovery of what the trust considers to be an overpayment<sup>13</sup>, he may ask the trust in writing<sup>14</sup> to review its decision and, if he does so, the trust must reconsider that decision<sup>15</sup>. If the chemist remains dissatisfied (whether on the same or different grounds), he may appeal to the Secretary of State by giving him a notice of appeal<sup>16</sup>. The Secretary of State must then send a written request to the parties to make, in writing and within a specified period, any representations they may wish to make about the matter<sup>17</sup>. Once the specified period has elapsed, the Secretary of State must give a copy of the representations received from a party to the other party<sup>18</sup>, and request in writing a party to whom a copy of representations is given to make within a specified period any written observations which he or it wishes to make on those representations<sup>19</sup>. Once that period has elapsed, the Secretary of State must, as soon as is reasonably practicable, having taken into account any such representations or observations<sup>20</sup> and such other evidence as he sees fit to consider, determine the appeal and give notice of the determination (including a record of the reasons for it) to both parties<sup>21</sup>; and give the primary care trust such directions in writing, if any, on the matter as he thinks fit<sup>22</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'chemist' see PARA 349 note 1.

3 'Suspended' means suspended by a primary care trust under the National Health Service Act 2006 s 149 (see PARA 344), s 154 (see PARA 394) or s 155 (see PARA 395), or under the National Health Service Act 1977 s 28DA (repealed) or the National Health Service (Primary Care) Act 1997 s 8ZA (repealed), or in relation to Scotland or Northern Ireland, suspended under equivalent provisions; and 'suspends' and 'suspension' must be construed accordingly: see the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 2(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

4 As to the Secretary of State see PARA 6 note 8.

5 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(1). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

- 6 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.
- 7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(2). As to the meaning of 'drug tariff' see PARA 411 note 9. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.
- 8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(3).
- 9 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(4).
- 10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(5) (reg 58(5)-(11) added by SI 2006/3373). As to the summary recovery of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.
- 11 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(6)(a) (as added: see note 10).
- 12 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(6)(b) (as added: see note 10).
- 13 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(6)(c) (as added: see note 10).
- 14 As to the meaning of 'writing' see PARA 7 note 2.
- 15 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(6) (as added: see note 10). Once the trust has reconsidered the decision, it must notify the chemist of the decision that is the outcome of its reconsideration of its original decision, and give him notice of the reasons for that decision: reg 58(6) (as so added).
- 16 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(7) (as added: see note 10). Such notice must be given within a period of 28 days beginning on the day that the primary care trust notified him of the reconsidered decision: s 58(7) (as so added). The notice must include the names and addresses of the parties to the disputed decision (reg 58(8)(a) (as so added)), a copy of the reconsidered decision (reg 58(8)(b) (as so added)), and a brief statement of the grounds for appeal (reg 58(8)(c) (as so added)).
- 17 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(9) (as added: see note 10). The request to the primary care trust must include a copy of the chemist's brief statement of the grounds for appeal: s 58(9) (as so added).
- 18 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(10)(a) (as added: see note 10).
- 19 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(10)(b) (as added: see note 10).
- 20 In such representations or observations as are referred to in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(9) and (10) (if submitted within the specified periods): see the text to notes 17-19.
- 21 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(11)(a) (as added: see note 10).
- 22 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 58(11)(b) (as added: see note 10).

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#### **415. Reward scheme in relation to non-genuine orders.**

A chemist<sup>1</sup> who is presented with, or receives, an order<sup>2</sup> for drugs or appliances<sup>3</sup> is eligible to claim a payment from the primary care trust<sup>4</sup> in such manner as is specified in the drug tariff<sup>5</sup> if: (1) he refused<sup>6</sup> to provide the drugs or listed appliances ordered and informed the primary care trust of this action as soon as practicable<sup>7</sup>; or (2) he provided the drugs or listed appliances but had reason to believe at that time or subsequently came to have reason to believe that the order was not a genuine order for the person named on the prescription form or repeatable prescription and informed the primary care trust of this belief as soon as practicable<sup>8</sup>; and in either case he has sent the order in question to the primary care trust, and the trust has established that the order was not a genuine order for the person named on the prescription form or repeatable prescription<sup>9</sup>. The primary care trust must in respect of any such claim make such payment as is due to the chemist calculated in the manner specified in the drug tariff<sup>10</sup>.

1 As to the meaning of 'chemist' see PARA 349 note 1.

2 'Order' includes a purported order: National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 59(3). As to the application of the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, see PARA 345 note 2.

3 Is an order under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 1 para 5(2) or (3) or Sch 3 para 4(2): see PARA 347. As to the meaning of 'drugs' see PARA 353 note 7. As to the meaning of 'appliance' see PARA 345 note 3.

4 As to primary care trusts see PARA 111.

5 As to the meaning of 'drug tariff' see PARA 411 note 9.

6 Is in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 1 para 9 or Sch 3 para 7: see PARA 347.

7 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 59(1)(a).

8 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 59(1)(b).

9 See the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 59(1).

10 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 59(2).

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## ***B. LOCAL PHARMACEUTICAL SERVICES***

### **(A) IN GENERAL**

#### **416. Application of enactments.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make, in relation to local pharmaceutical services arrangements<sup>3</sup> or persons<sup>4</sup> providing or assisting in the provision of services under such arrangements, provision corresponding (whether or not exactly) to enactments<sup>5</sup> containing provision relating to arrangements by strategic health authorities<sup>6</sup> for primary medical services<sup>7</sup> or primary dental services<sup>8</sup>, or persons who provide or perform services under such arrangements<sup>9</sup>. The regulations may, in particular, provide for the application of any such enactment with such modifications, if any, as the Secretary of State considers appropriate<sup>10</sup>; and the regulations may make provision amending, repealing or revoking enactments<sup>11</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016 (see PARA 430 et seq) and the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552 (see PARA 433 et seq) have effect under the National Health Service Act 2006 s 145.

3 'Local pharmaceutical services arrangements' means arrangements made under an LPS scheme or a pilot scheme: National Health Service Act 2006 s 145(4). As to the meaning of 'LPS scheme' see PARA 431. As to the meaning of 'pilot scheme' see PARA 419.

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the meaning of 'enactment' see PARA 10 note 7.

6 As to strategic health authorities see PARA 94 et seq.

7 I.e arrangements under the National Health Service Act 2006 s 92: see PARA 267.

8 National Health Service Act 2006 s 145(1)(a). Arrangements for primary dental services are those under the National Health Service Act 2006 s 107: see PARA 288. As to the equivalent provision to the National Health Service Act 2006 s 145 in relation to Wales see the National Health Service (Wales) Act 2006 s 103. As to the meaning of 'Wales' see PARA 6 note 2.

9 National Health Service Act 2006 s 145(1)(b).

10 National Health Service Act 2006 s 145(2).

11 See the National Health Service Act 2006 s 145(3).

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#### **417. Persons performing local pharmaceutical services.**

Regulations<sup>1</sup> may provide that a health care professional<sup>2</sup> of a prescribed<sup>3</sup> description may not perform any local pharmaceutical service<sup>4</sup> for which a primary care trust is responsible<sup>5</sup> unless he is included in a list maintained under the regulations by a primary care trust<sup>6</sup>. The regulations may make provision in relation to such lists and in particular as to:

- 271 (1) the preparation, maintenance and publication of a list<sup>7</sup>;
- 272 (2) eligibility for inclusion in a list<sup>8</sup>;
- 273 (3) applications for inclusion (including provision as to the primary care trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application)<sup>9</sup>;
- 274 (4) the grounds on which an application for inclusion may or must be granted or refused<sup>10</sup>;
- 275 (5) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits)<sup>11</sup>;
- 276 (6) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal)<sup>12</sup>;
- 277 (7) circumstances in which a person included in a list may not withdraw from it<sup>13</sup>;
- 278 (8) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State<sup>14</sup> or a person appointed by him)<sup>15</sup>;
- 279 (9) the criteria to be applied in making decisions under the regulations<sup>16</sup>;
- 280 (10) appeals against decisions made by a primary care trust under the regulations<sup>17</sup>;
- 281 (11) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals<sup>18</sup>; and
- 282 (12) the disqualification of practitioners<sup>19</sup>.

The regulations may, in particular, also provide for: (a) a person's inclusion in a list to be subject to conditions determined by a primary care trust<sup>20</sup>; (b) a primary care trust to vary the conditions or impose different ones<sup>21</sup>; (c) the consequences of failing to comply with a condition (including removal from a list)<sup>22</sup>; (d) the review by a primary care trust of decisions made by it by virtue of the regulations<sup>23</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

2 'Health care professional' means a person who is a member of a profession regulated by a body mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294): National Health Service Act 2006 s 146(2)(a). As to the meaning of 'person' see PARA 17 note 2.

3 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

4 As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

5 A primary care trust is responsible for a local pharmaceutical service if it secures its provision by or under any enactment: National Health Service Act 2006 s 146(2)(b). As to primary care trusts see PARA 111. As to the meaning of 'enactment' see PARA 10 note 7.

6 National Health Service Act 2006 s 146(1).

7 National Health Service Act 2006 s 146(3)(a).

8 National Health Service Act 2006 s 146(3)(b).

9 National Health Service Act 2006 s 146(3)(c).

10 National Health Service Act 2006 s 146(3)(d).

11 National Health Service Act 2006 s 146(3)(e).

12 National Health Service Act 2006 s 146(3)(f).

13 National Health Service Act 2006 s 146(3)(g).

14 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

15 National Health Service Act 2006 s 146(3)(h).

16 National Health Service Act 2006 s 146(3)(i).

17 National Health Service Act 2006 s 146(3)(j).

18 National Health Service Act 2006 s 146(3)(k). Regulations making provision as to the matters referred to in s 146(3)(k) may in particular authorise the disclosure of information by a primary care trust to the Secretary of State (s 146(6)(a)), and by the Secretary of State to a primary care trust (s 146(6)(b)).

19 National Health Service Act 2006 s 146(3). Such provision is any provision corresponding to anything in ss 151-159 (see PARAS 388, 390, 394, 395, 397, 401, 402): s 146(3).

20 National Health Service Act 2006 s 146(4)(a). The imposition of such conditions must be with a view to preventing any prejudice to the efficiency of the services to which a list relates (s 146(5)(a)), or preventing fraud (s 146(5)(b)).

21 National Health Service Act 2006 s 146(4)(b). See also note 20.

22 National Health Service Act 2006 s 146(4)(c).

23 National Health Service Act 2006 s 146(4)(d).

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**418. Assistance and support.**

A primary care trust<sup>1</sup> may provide assistance<sup>2</sup> or support to any person<sup>3</sup> providing local pharmaceutical services<sup>4</sup>. Assistance or support so provided by a primary care trust is provided on such terms, including terms as to payment, as the primary care trust considers appropriate<sup>5</sup>.

1 As to primary care trusts see PARA 111.

2 'Assistance' includes financial assistance: National Health Service Act 2006 s 147(3).

3 As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service Act 2006 s 147(1). As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

5 National Health Service Act 2006 s 147(2).

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## (B) PILOT SCHEMES

### 419. Establishment of schemes.

Primary care trusts<sup>1</sup> may establish pilot schemes<sup>2</sup>.

A 'pilot scheme' means one or more agreements made<sup>3</sup> by a primary care trust<sup>4</sup> under which local pharmaceutical services<sup>5</sup> will be provided (otherwise than by the primary care trust)<sup>6</sup>, and the parties to which do not include any other primary care trust<sup>7</sup>. A pilot scheme may include arrangements: (1) for the provision of services which are not local pharmaceutical services, but which may be provided under the National Health Service Act 2006<sup>8</sup> and whether or not of the kind usually provided by pharmacies<sup>9</sup>; (2) for the provision of training and education (including training and education for persons<sup>10</sup> who are, or may become, involved in the provision of local pharmaceutical services)<sup>11</sup>. A pilot scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of primary medical services<sup>12</sup> or primary dental services<sup>13</sup>.

In determining the arrangements it needs to make in order to comply with its duty to provide pharmaceutical services<sup>14</sup>, a primary care trust may take into account arrangements under a pilot scheme made by it<sup>15</sup>. The functions<sup>16</sup> of an NHS trust<sup>17</sup> and an NHS foundation trust<sup>18</sup> include power to provide any services to which a pilot scheme applies<sup>19</sup>.

1 As to primary care trusts see PARA 111.

2 National Health Service Act 2006 s 134(1). As to the equivalent provision to the National Health Service Act 2006 ss 134, 141 in relation to Wales see the National Health Service (Wales) Act 2006 ss 92, 99. As to the meaning of 'Wales' see PARA 6 note 2.

The National Health Service Act 2006 has effect in relation to piloted services: (1) subject to any provision of, or made under, Pt 7 Ch 2 (ss 134-143), s 145 (application of enactments: see PARA 416) or s 178 (charges for local pharmaceutical services: see PARA 472) (s 141(a)); but (2) otherwise as if those services were provided as a result of the delegation by the Secretary of State of his functions (by directions given under s 7: see PARA 7) (s 141(b)). 'Piloted services' means services provided under a pilot scheme (including any services to which the scheme applies as a result of s 134(3): see the text to notes 8-11): s 134(7). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 In accordance with the National Health Service Act 2006 Pt 7 Ch 2 (ss 134-143): see PARAS 420 et seq.

4 National Health Service Act 2006 s 134(2)(a).

5 In the National Health Service Act 2006, except where the context otherwise requires, 'local pharmaceutical services' means such services as are prescribed under s 134(7) or Sch 12 para 1(7) (see PARA 431): s 275(1). In Pt 7 Ch 2 (ss 134-143) 'local pharmaceutical services' means such services of a kind which may be provided under s 126 (see PARA 339), or by virtue of s 127 (see PARA 346) (other than practitioner dispensing services) as may be prescribed for these purposes: s 134(7). 'Prescribed' means prescribed by regulations: s 275(1). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. 'Local pharmaceutical services' means services of a kind which may be provided under s 126 or by virtue of s 127, other than practitioner dispensing services, and which are provided under a pilot scheme: National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888, reg 2; National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). The National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888, have effect under the National Health Service Act 2006 s 134(7) by virtue of the National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(1), (2). The National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888, extend to England only:



reg 1(2). As to the meaning of 'England' see PARA 6 note 2. At the date at which this volume states the law no equivalent regulations had been made in relation to Wales.

'Practitioner dispensing services' means the provision of drugs, medicines or listed appliances (within the meaning given by the National Health Service Act 2006 s 126: see PARA 339 note 5) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of s 132(1) (see PARA 342): s 134(8). As to the meaning of 'medicine' see PARA 339 note 4. As to the meaning of 'medical practitioner' see PARA 84 note 7. As to the meaning of 'dental practitioner' see PARA 87 note 7. As to the meaning of 'patient' see PARA 15 note 6.

6 National Health Service Act 2006 s 134(2)(b).

7 National Health Service Act 2006 s 134(2)(c). Any person providing local pharmaceutical services under a pilot scheme established under s 134 or the National Health Service (Wales) Act 2006 s 92 is a public authority for the purposes of the Freedom of Information Act 2000 in respect of information relating to the provision of those services: see s 3, Sch 1 Pt III (amended by the Health and Social Care Act 2001 Sch 5 Pt 1 para 14(1); National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(l)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

8 le other than under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133): see PARA 339 et seq.

9 National Health Service Act 2006 s 134(3)(a).

10 As to the meaning of 'person' see PARA 17 note 2.

11 National Health Service Act 2006 s 134(3)(b).

12 As to primary medical services see PARA 241.

13 National Health Service Act 2006 s 134(4). As to primary dental services see PARA 277.

14 le its duty under the National Health Service Act 2006 s 126: see PARA 339.

15 National Health Service Act 2006 s 134(5).

16 As to the meaning of 'functions' see PARA 6 note 3.

17 As to NHS trusts see PARA 155.

18 As to NHS foundation trusts see PARA 174.

19 National Health Service Act 2006 s 134(6).

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#### **420. Initiation of schemes.**

A pilot scheme<sup>1</sup> may be made on the initiative of a primary care trust<sup>2</sup>, or in response to a request made by a person<sup>3</sup> wishing to participate in the scheme<sup>4</sup>.

Before making a pilot scheme, the primary care trust concerned must prepare proposals for the scheme and submit them to the Secretary of State<sup>5</sup>. However, proposals may be submitted by a primary care trust only with the agreement of the other proposed participants<sup>6</sup>. In preparing proposals for a pilot scheme, a primary care trust must comply with any directions<sup>7</sup> given to it by the Secretary of State as to the matters to be dealt with, and information to be included, in the proposals<sup>8</sup>, and the procedure to be followed by the trust<sup>9</sup>. Before submitting proposals for a pilot scheme, a primary care trust must (in addition to complying with any requirements about consultation imposed by or under any other enactment<sup>10</sup>) comply with any directions given to it by the Secretary of State about the extent to which, and manner in which, it must consult on the proposals<sup>11</sup>. The Secretary of State may give directions<sup>12</sup>: (1) requiring a primary care trust to submit proposals to him<sup>13</sup>; (2) as to the matters to which a primary care trust must have regard in making any recommendation to the Secretary of State when submitting proposals for a pilot scheme<sup>14</sup>; (3) as to the form in which any such recommendation must be made<sup>15</sup>; (4) requiring primary care trusts to provide the Secretary of State with summaries (prepared and presented in the manner specified in the directions) of all requests received by them during the period specified in the directions<sup>16</sup>.

Provision may be made by regulations for primary care trusts to make payments of financial assistance for preparatory work<sup>17</sup>. The regulations may, in particular, include provision: (a) prescribing the circumstances in which payments of financial assistance may be made<sup>18</sup>; (b) imposing a limit on the amount of any payment of financial assistance which a primary care trust may make in any prescribed period in respect of any one person or any one pilot scheme<sup>19</sup>; (c) imposing a limit on the aggregate amount which a primary care trust may pay by way of financial assistance in any one financial year<sup>20</sup>; (d) requiring a person to whom such assistance is given to comply with such conditions as may be imposed in accordance with prescribed requirements<sup>21</sup>; and (e) for repayment in the case of a failure to comply with any condition so imposed<sup>22</sup>.

1 As to the meaning of 'pilot scheme' see PARA 419.

2 National Health Service Act 2006 Sch 11 para 1(1)(a). As to primary care trusts see PARA 111. As to the equivalent provision to the National Health Service Act 2006 Sch 11 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 6. As to the meaning of 'Wales' see PARA 6 note 2.

3 As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service Act 2006 Sch 11 para 1(1)(b). The request must be made in writing, and comply with such requirements (if any) as may be prescribed: Sch 11 para 1(2). As to the meaning of 'writing' see PARA 7 note 2. 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 275(1). As to the making of regulations see PARA 9. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. At the date at which this volume states the law no such regulations had been made.

5 National Health Service Act 2006 Sch 11 para 2(1). As to preliminary approval of proposals see PARA 421; and as to approval of proposals see PARA 422. The application must include an assessment of the effect of the proposals on existing services: see PARA 423.

6 National Health Service Act 2006 Sch 11 para 2(2).

7 A direction under the National Health Service Act 2006 Sch 11 para 2 may be given so as to apply: (1) generally in circumstances specified in the direction (Sch 11 para 2(6)(a)); or (2) in relation to a particular case (Sch 11 para 2(6)(b)). Directions under Sch 11 para 2 must be given by an instrument in writing: see s 273(4); and PARA 9.

8 National Health Service Act 2006 Sch 11 para 2(3)(a).

9 National Health Service Act 2006 Sch 11 para 2(3)(b).

10 As to the meaning of 'enactment' see PARA 10 note 7.

11 National Health Service Act 2006 Sch 11 para 2(4). See also note 7.

12 See note 7.

13 National Health Service Act 2006 Sch 11 para 2(5)(a).

14 National Health Service Act 2006 Sch 11 para 2(5)(b).

15 National Health Service Act 2006 Sch 11 para 2(5)(c).

16 National Health Service Act 2006 Sch 11 para 2(5)(d).

17 National Health Service Act 2006 s 140(1). 'Preparatory work' means work which it is reasonable for a person to undertake in connection with preparing proposals for a pilot scheme, or in preparing for the provision by him of any piloted services: s 140(2). As to the meaning of 'piloted services' see PARA 419 note 2. At the date at which this volume states the law no such regulations had been made. As to the equivalent provision to s 140 in relation to Wales see the National Health Service (Wales) Act 2006 s 98.

18 National Health Service Act 2006 s 140(3)(a).

19 National Health Service Act 2006 s 140(3)(b).

20 National Health Service Act 2006 s 140(3)(c). As to the meaning of 'financial year' see PARA 132 note 1.

21 National Health Service Act 2006 s 140(3)(d).

22 National Health Service Act 2006 s 140(3)(e).

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#### **421. Preliminary approval.**

If a primary care trust<sup>1</sup> proposes to make a pilot scheme<sup>2</sup> but has not determined who the participants, or who all of the participants, will be<sup>3</sup>, the trust may apply to the Secretary of State<sup>4</sup> for preliminary approval to be given to its proposals<sup>5</sup>. If such an application is made, the Secretary of State must<sup>6</sup>: (1) give preliminary approval to the proposals as submitted<sup>7</sup>; (2) make such modifications as he considers appropriate and give preliminary approval to them as modified<sup>8</sup>; or (3) reject them<sup>9</sup>.

If a primary care trust is given preliminary approval, it must take such steps, with a view to obtaining final approval for the proposed pilot scheme, as the Secretary of State may direct<sup>10</sup>. The fact that the Secretary of State has given preliminary approval to proposals for a pilot scheme does not affect his right to refuse to approve the completed proposals when they are submitted<sup>11</sup> to him<sup>12</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'pilot scheme' see PARA 419.

3 National Health Service Act 2006 Sch 11 para 4(1). As to the equivalent provision to the National Health Service Act 2006 Sch 11 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 6. As to the meaning of 'Wales' see PARA 6 note 2.

4 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

5 National Health Service Act 2006 Sch 11 para 4(2). The provisions of Sch 11 para 2(3)-(6) (see PARA 420) apply in relation to an application for preliminary approval of such proposals as they apply in relation to proposals under that paragraph: Sch 11 para 4(6). The application must include an assessment of the effect of the proposals on existing services: see PARA 423.

6 The Secretary of State may issue guidance about the criteria by reference to which, as a general rule, powers under the National Health Service Act 2006 Sch 11 para 4 are likely to be exercised: Sch 11 para 6.

7 National Health Service Act 2006 Sch 11 para 4(3)(a).

8 National Health Service Act 2006 Sch 11 para 4(3)(b).

9 National Health Service Act 2006 Sch 11 para 4(3)(c).

10 National Health Service Act 2006 Sch 11 para 4(4). Such directions must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

11 Ie under the National Health Service Act 2006 Sch 11 para 2: see PARA 420.

12 National Health Service Act 2006 Sch 11 para 4(5).

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## **422. Approval.**

If proposals for a pilot scheme<sup>1</sup> are submitted<sup>2</sup>, the Secretary of State must<sup>3</sup>: (1) approve them as submitted<sup>4</sup>; (2) make such modifications as he considers appropriate and approve them as modified<sup>5</sup>; or (3) reject them<sup>6</sup>. The Secretary of State may not approve proposals for a pilot scheme unless satisfied that they include satisfactory provision for any participant other than the primary care trust to withdraw from the scheme if he wishes to do so<sup>7</sup>. When the Secretary of State makes a decision in respect of proposals submitted to him he must notify the primary care trust concerned of the decision<sup>8</sup>, and the primary care trust must, without delay, notify the other participants in the proposed scheme<sup>9</sup>.

1 As to the meaning of 'pilot scheme' see PARA 419.

2 Ie under the National Health Service Act 2006 Sch 11 para 2: see PARA 420.

3 The Secretary of State may issue guidance about the criteria by reference to which, as a general rule, powers under the National Health Service Act 2006 Sch 11 para 3 are likely to be exercised: Sch 11 para 6. As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Sch 11 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 6. As to the meaning of 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 Sch 11 para 3(1)(a). As to making a pilot scheme see PARA 424. Before the Secretary of State approves a pilot scheme under Sch 11 para 3(1)(a) or (b) (see the text to note 5), he must determine whether the pilot scheme provider is to be given a right of return if he makes an application for his name to be included in a primary care trust's pharmaceutical list after ceasing to provide local pharmaceutical services under the pilot scheme: see the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4(1) (substituted by SI 2006/552). As to such determinations see the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4(4)-(10) (reg 4(8) amended by SI 2002/2469). 'Pilot scheme provider' means a person providing, or proposing to provide, piloted services under a pilot scheme: National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4(11). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'piloted services' see PARA 419 note 2. 'Pharmaceutical list' must be construed in accordance with the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 4 (see PARA 353): National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4(11). As to primary care trusts see PARA 111. As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

5 National Health Service Act 2006 Sch 11 para 3(1)(b). See also note 4.

6 National Health Service Act 2006 Sch 11 para 3(1)(c).

7 National Health Service Act 2006 Sch 11 para 3(2).

8 National Health Service Act 2006 Sch 11 para 3(3)(a).

9 National Health Service Act 2006 Sch 11 para 3(3)(b).

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#### **423. Effect of proposals on existing services.**

Proposals for a pilot scheme<sup>1</sup>, or those included in an application for preliminary approval of proposals<sup>2</sup>, must include: (1) an assessment by the primary care trust<sup>3</sup> of the likely effect of the implementation of the proposals in the trust's area on the specified services<sup>4</sup>; (2) any assessment supplied<sup>5</sup> to the primary care trust by another primary care trust<sup>6</sup>. The specified services are: (a) pharmaceutical services<sup>7</sup>; (b) local pharmaceutical services<sup>8</sup> provided under existing pilot schemes or LPS schemes<sup>9</sup>; (c) primary medical services<sup>10</sup>.

If it appears to a primary care trust that the proposals would, if implemented, affect any of the specified services provided in the area of another primary care trust, it must consult that other trust about the proposals before submitting them<sup>11</sup> or including them in an application<sup>12</sup> for preliminary approval<sup>13</sup>. A primary care trust which is so consulted must prepare an assessment of the likely effect of the implementation of the proposals on those services and supply it to the primary care trust which consulted it<sup>14</sup>.

1    Ie proposals submitted under the National Health Service Act 2006 Sch 11 para 2: see PARA 420. As to the meaning of 'pilot scheme' see PARA 419.

2    Ie under the National Health Service Act 2006 Sch 11 para 4: see PARA 421.

3    As to primary care trusts see PARA 111.

4    National Health Service Act 2006 Sch 11 para 5(1)(a). As to the equivalent provision to the National Health Service Act 2006 Sch 11 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 6. As to the meaning of 'Wales' see PARA 6 note 2.

5    Ie under the National Health Service Act 2006 Sch 11 para 5(4): see the text to note 14.

6    National Health Service Act 2006 Sch 11 para 5(1)(b).

7    National Health Service Act 2006 Sch 11 para 5(2)(a). As to the meaning of 'pharmaceutical services' see PARA 339.

8    As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

9    National Health Service Act 2006 Sch 11 para 5(2)(b). As to the meaning of 'LPS scheme' see PARA 431.

10   National Health Service Act 2006 Sch 11 para 5(2)(c). As to primary medical services see PARA 241.

11   Ie under the National Health Service Act 2006 Sch 11 para 2: see PARA 420.

12   Ie under the National Health Service Act 2006 Sch 11 para 4: see PARA 421.

13   National Health Service Act 2006 Sch 11 para 5(3).

14   National Health Service Act 2006 Sch 11 para 5(4).

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#### **424. Making a scheme.**

If the Secretary of State<sup>1</sup> approves proposals for a pilot scheme<sup>2</sup> and notifies the primary care trust<sup>3</sup> concerned<sup>4</sup>, the primary care trust must implement the proposals in accordance with directions<sup>5</sup> given by the Secretary of State<sup>6</sup>. A proposed participant in a pilot scheme (other than the primary care trust concerned) may withdraw at any time before the proposals relating to him are implemented<sup>7</sup>. A pilot scheme, as implemented, may differ from the proposals for the scheme approved by the Secretary of State only if he agrees to the variation<sup>8</sup>; or directions given by him<sup>9</sup> authorise variations that satisfy specified requirements<sup>10</sup>, and the variation satisfies those requirements<sup>11</sup>.

As soon as is reasonably practicable after implementing proposals for a pilot scheme, the primary care trust concerned must (in accordance with any directions given to it by the Secretary of State) publish details of the scheme<sup>12</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Sch 11 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 6. As to the meaning of 'Wales' see PARA 6 note 2.

2 Ie under the National Health Service Act 2006 Sch 11 para 3: see PARA 422. As to the meaning of 'pilot scheme' see PARA 419.

3 As to primary care trusts see PARA 111.

4 Ie in accordance with the National Health Service Act 2006 Sch 11 para 3: see PARA 422.

5 Such directions must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

6 National Health Service Act 2006 Sch 11 para 7(1).

7 National Health Service Act 2006 Sch 11 para 7(2).

8 National Health Service Act 2006 Sch 11 para 7(3). Before a pilot scheme is varied so as to permit a new pilot scheme provider to provide local pharmaceutical services under the scheme, the Secretary of State must make a determination as to whether the new pilot scheme provider is to be given the right to return to a primary care trust's pharmaceutical list: see the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4(2). Before a pilot scheme is varied so as to permit the provision of local pharmaceutical services from different, or additional, premises, the Secretary of State must consider how such a change affects (if at all) a determination as to the right to return to a primary care trust's pharmaceutical list, and may make a further determination varying a determination in consequence of such a change: see the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4(3). As to such determinations see the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4; and PARA 422 note 4. As to the meaning of 'pilot scheme provider' see PARA 422 note 4. As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

9 Ie either under the National Health Service Act 2006 Sch 11 para 7(1) (see the text to notes 1-6) or generally.

10 National Health Service Act 2006 Sch 11 para 7(3)(a).

11 National Health Service Act 2006 Sch 11 para 7(3)(b). See also note 8.

12 National Health Service Act 2006 Sch 11 para 7(4).





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#### **425. Designation of priority neighbourhoods or premises.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> allowing a primary care trust<sup>3</sup> to designate neighbourhoods<sup>4</sup>, premises<sup>5</sup>, or descriptions of premises<sup>6</sup>, for the purposes of pilot schemes<sup>7</sup>. The regulations may, in particular, make provision: (1) as to the circumstances in which, and the neighbourhoods or premises in relation to which, designations may be made or maintained<sup>8</sup>; (2) allowing a primary care trust to defer consideration of pharmaceutical list applications<sup>9</sup> relating to neighbourhoods, premises or descriptions of premises that have been designated<sup>10</sup>; (3) allowing a designation to be cancelled in prescribed circumstances<sup>11</sup>; (4) requiring a designation to be cancelled if the Secretary of State gives a direction to that effect<sup>12</sup>, or in prescribed circumstances<sup>13</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 136 in relation to Wales see the National Health Service (Wales) Act 2006 s 94. As to the meaning of 'Wales' see PARA 6 note 2.

2 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

3 As to primary care trusts see PARA 111.

4 National Health Service Act 2006 s 136(1)(a).

5 National Health Service Act 2006 s 136(1)(b).

6 National Health Service Act 2006 s 136(1)(c).

7 See the National Health Service Act 2006 s 136(1). As to the meaning of 'pilot scheme' see PARA 419. As to the provision which has been made see the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888, regs 3-6 (all amended by SI 2002/2469; National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888, reg 3 further amended by SI 2005/641, SI 2006/552). The National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002, SI 2002/888, have effect under the National Health Service Act 2006 s 136 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2).

8 National Health Service Act 2006 s 136(2)(a).

9 'Pharmaceutical list applications' means applications for inclusion in a pharmaceutical list: National Health Service Act 2006 s 136(3). As to the meaning of 'pharmaceutical list' see PARA 340 note 12.

10 National Health Service Act 2006 s 136(2)(b).

11 National Health Service Act 2006 s 136(2)(c). 'Prescribed' means prescribed by regulations: s 275(1).

12 National Health Service Act 2006 s 136(2)(d)(i). Such directions must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

13 National Health Service Act 2006 s 136(2)(d)(ii).

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**426. Premises from which piloted services may be provided.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> prevent (except in such circumstances and to such extent as may be prescribed<sup>3</sup>) the provision of both piloted services<sup>4</sup> and pharmaceutical services<sup>5</sup> from the same premises<sup>6</sup>; and make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a pharmaceutical list<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 142 in relation to Wales see the National Health Service (Wales) Act 2006 s 100. As to the meaning of 'Wales' see PARA 6 note 2.

2 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

3 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

4 As to the meaning of 'piloted services' see PARA 419 note 2.

5 As to the meaning of 'pharmaceutical services' see PARA 339.

6 National Health Service Act 2006 s 142(a).

7 National Health Service Act 2006 s 142(b). As to the meaning of 'pharmaceutical list' see PARA 340 note 12.

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#### **427. Reviews of pilot schemes.**

At least one review of the operation of each pilot scheme<sup>1</sup> must be conducted by the Secretary of State<sup>2</sup>. Each pilot scheme must be reviewed before the end of the period of three years beginning with the date on which piloted services<sup>3</sup> are first provided under the scheme<sup>4</sup>. When conducting a review of a pilot scheme, the Secretary of State must give the primary care trust<sup>5</sup> concerned<sup>6</sup>, and any person<sup>7</sup> providing services under the scheme<sup>8</sup>, an opportunity to comment on any matter relevant to the review<sup>9</sup>. Otherwise, the procedure on any review must be determined by the Secretary of State<sup>10</sup>.

1 As to the meaning of 'pilot scheme' see PARA 419.

2 National Health Service Act 2006 s 137(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 137 in relation to Wales see the National Health Service (Wales) Act 2006 s 95. As to the meaning of 'Wales' see PARA 6 note 2.

3 As to the meaning of 'piloted services' see PARA 419 note 2.

4 National Health Service Act 2006 s 137(2).

5 As to primary care trusts see PARA 111.

6 National Health Service Act 2006 s 137(3)(a).

7 As to the meaning of 'person' see PARA 17 note 2.

8 National Health Service Act 2006 s 137(3)(b).

9 National Health Service Act 2006 s 137(3).

10 National Health Service Act 2006 s 137(4).

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#### **428. Variation and termination of pilot schemes.**

The Secretary of State<sup>1</sup> may give directions<sup>2</sup> authorising primary care trusts<sup>3</sup> to vary pilot schemes<sup>4</sup> in such circumstances, and subject to such conditions, as may be specified in the directions<sup>5</sup>. The Secretary of State may by directions require a pilot scheme to be varied by the primary care trust concerned in accordance with the directions<sup>6</sup>.

If satisfied that a pilot scheme is (for any reason) unsatisfactory, the Secretary of State may give directions to the primary care trust concerned requiring it to bring the scheme to an end in accordance with the terms of the directions<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 s 138 in relation to Wales see the National Health Service (Wales) Act 2006 s 96. As to the meaning of 'Wales' see PARA 6 note 2.

2 Directions under the National Health Service Act 2006 s 138 must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

3 As to primary care trusts see PARA 111.

4 Ie otherwise than in response to directions given under the National Health Service Act 2006 s 138(2): see the text to note 6. As to the meaning of 'pilot scheme' see PARA 419.

5 National Health Service Act 2006 s 138(1). Before a pilot scheme is varied so as to permit a new pilot scheme provider to provide local pharmaceutical services under the scheme, the Secretary of State must make a determination as to whether the new pilot scheme provider is to be given the right to return to a primary care trust's pharmaceutical list: see the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4(2). Before a pilot scheme is varied so as to permit the provision of local pharmaceutical services from different, or additional, premises, the Secretary of State must consider how such a change affects (if at all) a determination as to the right to return to a primary care trust's pharmaceutical list, and may make a further determination varying a determination in consequence of such a change: see the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4(3). As to such determinations see the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 4; and PARA 422 note 4. As to the meaning of 'pilot scheme provider' see PARA 422 note 4. As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

6 National Health Service Act 2006 s 138(2). See also note 2.

7 National Health Service Act 2006 s 138(3). See also note 2.

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#### **429. NHS contracts and provision of piloted services.**

In the case of a pilot scheme<sup>1</sup> entered into, or to be entered into, by a single individual or body corporate (other than an NHS foundation trust<sup>2</sup>), that individual or body may make an application to become a health service body<sup>3</sup>. In the case of any other pilot scheme, all of those providing, or proposing to provide, piloted services<sup>4</sup> under the scheme may together make an application to become a single health service body<sup>5</sup>.

An application must be made to the Secretary of State<sup>6</sup> in accordance with such provisions as may be made by regulations<sup>7</sup>, and specify the pilot scheme in relation to which it is made<sup>8</sup>. Except in such cases as may be prescribed<sup>9</sup>, the Secretary of State may grant an application<sup>10</sup>.

If an application is granted, the Secretary of State must specify a date in relation to that application and, as from that date the applicant is<sup>11</sup> or, as the case may be, the applicants together are<sup>12</sup>, a health service body for the purposes of the provisions<sup>13</sup> relating to NHS contracts<sup>14</sup>. Regulations may provide for a PHS body to cease to be a PHS body in prescribed circumstances<sup>15</sup>. The Secretary of State must maintain and publish a list of PHS bodies<sup>16</sup>, and publish a revised copy of the list as soon as is reasonably practicable after any change is made to it<sup>17</sup>. The list must be published in such manner as the Secretary of State considers appropriate<sup>18</sup>.

1 As to the meaning of 'pilot scheme' see PARA 419.

2 As to NHS foundation trusts see PARA 174.

3 National Health Service Act 2006 s 139(1). As to the equivalent provision to the National Health Service Act 2006 s 139 in relation to Wales see the National Health Service (Wales) Act 2006 s 97. As to the meaning of 'Wales' see PARA 6 note 2.

4 As to the meaning of 'piloted services' see PARA 419 note 2.

5 National Health Service Act 2006 s 139(2).

6 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

7 National Health Service Act 2006 s 139(3)(a). As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016 (see PARA 430) have effect under the National Health Service Act 2006 s 139.

8 National Health Service Act 2006 s 139(3)(b).

9 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

10 National Health Service Act 2006 s 139(4).

11 See the National Health Service Act 2006 s 139(4)(a).

12 See the National Health Service Act 2006 s 139(4)(b).

13 Ie for the purposes of the National Health Service Act 2006 s 9: see PARA 228.

14 National Health Service Act 2006 s 139(4). Section 9 (see PARAS 228, 229) has effect in relation to such a health service body (known as a 'PHS body'), acting as commissioner, as if the functions referred to in s 9(1) (see PARA 228) were the provision of piloted services: s 139(6). Except in such circumstances as may be prescribed, a PHS body resulting from an application under s 139(2) (see the text to notes 4, 5) must be treated, at any time, as consisting of those who are providing piloted services under the scheme: s 139(7). A direction as to payment made under s 9(11) (see PARA 229) against, or in favour of, a PHS body is enforceable in a county court (if the court so orders) as if it were a judgment or order of that court: s 139(8). As to county courts see **COURTS** vol 10 (Reissue) PARA 701 et seq.

15 National Health Service Act 2006 s 139(9).

16 National Health Service Act 2006 s 139(10)(a).

17 National Health Service Act 2006 s 139(10)(b).

18 National Health Service Act 2006 s 139(11).

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### **430. PHS bodies.**

An application to become a PHS body<sup>1</sup> must be made in writing<sup>2</sup>, and must include the name and address of each applicant<sup>3</sup>. A copy of an application must be sent to the relevant primary care trust<sup>4</sup>. The grant of an application does not affect the nature of, or any rights or liabilities arising under, any contract entered into by an applicant before the date on which the application comes into effect<sup>5</sup>.

A PHS body ceases to be such a body if all the members of the PHS body withdraw from the relevant pilot scheme before it has been implemented<sup>6</sup>. Where the relevant pilot scheme has been implemented, a PHS body ceases to be such a body if: (1) the relevant pilot scheme comes to an end (in circumstances other than those specified in head (2) below)<sup>7</sup>; (2) the Secretary of State<sup>8</sup> gives directions<sup>9</sup> relating to the relevant pilot scheme<sup>10</sup>; or (3) all the members of the PHS body agree in writing that that body is to cease to be such a body on a specified date, and they give notice in writing of their decision to the Secretary of State and the relevant primary care trust<sup>11</sup>.

Where a PHS body ceases to be such a body under these provisions, it ceases to be such a body for all purposes except that of being a party to an NHS contract<sup>12</sup> entered into on a date before that on which the PHS body ceases to be such a body (for which purpose it ceases to be such a body on the determination of that NHS contract)<sup>13</sup>.

1 As to PHS bodies see PARA 429 note 14.

2 As to the meaning of 'writing' see PARA 7 note 2.

3 National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 2(1). The National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, apply to England only: reg 1(2). The National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, have effect under the National Health Service Act 2006 s 139 (see PARA 429) by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). At the date at which this volume states the law no equivalent regulations had been made in relation to Wales. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 2(2) (amended by SI 2002/2469). 'Relevant primary care trust' means the primary care trust which is or is to be, a party to the relevant pilot scheme: National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 1(3) (definition amended by SI 2002/2469). 'Relevant pilot scheme' means the pilot scheme under which those making an application to become a PHS body are to provide, or are providing, piloted services; or the members of the PHS body are to provide, or are providing, piloted services, as the case may be: National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 1(3). As to primary care trusts see PARA 111. As to the meaning of 'pilot scheme' see PARA 419. As to the meaning of 'piloted services' see PARA 419 note 2.

5 National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 2(3).

6 National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 3(1). The date on which a PHS body ceases to be such a body in such a case is the date on which the last member of the PHS body withdraws from the relevant pilot scheme: reg 3(3)(a).

7 National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 3(2)(a). The date on which a PHS body ceases to be such a body in such a case is the date on which the relevant pilot scheme comes to an end: reg 3(3)(b).

8 As to the Secretary of State see PARA 6 note 8.

9 le under the National Health Service Act 2006 s 138(3): see PARA 428.

10 National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 3(2)(b). The date on which a PHS body ceases to be such a body in such a case is the date on which the directions are given: reg 3(3)(c).

11 National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 3(2)(c). The date on which a PHS body ceases to be such a body in such a case is the date specified by the members of the PHS body: reg 3(3)(d).

12 As to the meaning of 'NHS contract' see PARA 228: definition applied by the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 3(6); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

13 National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) (No 2) Regulations 2002, SI 2002/2016, reg 3(4). Where, by virtue of reg 3(4), a PHS body remains such a body for the purpose of being a party to an NHS contract: (1) if (on the date the PHS body ceases to be such a body for other purposes under reg 3) the relevant pilot scheme has been implemented, that body is to be treated as consisting of those who provided piloted services under that scheme on the date on which that body ceased (for all other purposes) to be a PHS body (reg 3(5)(a)); and (2) if (on the date the PHS body ceases to be such a body for other purposes under reg 3) the relevant pilot scheme has not been implemented, that body is to be treated as consisting of those who proposed to provide piloted services under that scheme on the date on which that NHS contract was entered into (reg 3(5)(b)).



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## (C) LOCAL PHARMACEUTICAL SERVICES SCHEMES

### *(a) In general*

#### **431. Establishment of schemes.**

Primary care trusts<sup>1</sup> may establish LPS schemes<sup>2</sup>. 'LPS scheme' means one or more agreements made<sup>3</sup> by a primary care trust<sup>4</sup> under which local pharmaceutical services<sup>5</sup> will be provided (otherwise than by the primary care trust)<sup>6</sup> and the parties to which do not include any other primary care trust<sup>7</sup>. An LPS scheme may include arrangements: (1) for the provision of services which are not local pharmaceutical services, but which may be provided under the National Health Service Act 2006 (other than pharmaceutical services<sup>8</sup>), and whether or not of the kind usually provided by pharmacies<sup>9</sup>; (2) for the provision of training and education (including training and education for persons<sup>10</sup> who are, or may become, involved in the provision of local pharmaceutical services)<sup>11</sup>. An LPS scheme may not combine arrangements for the provision of local pharmaceutical services with arrangements for the provision of primary medical services<sup>12</sup> or primary dental services<sup>13</sup>.

In determining the arrangements it needs to make in order to comply with its duty to provide pharmaceutical services<sup>14</sup>, a primary care trust may take into account arrangements under an LPS scheme made by it<sup>15</sup>. The functions<sup>16</sup> of an NHS trust<sup>17</sup> and an NHS foundation trust<sup>18</sup> include power to provide any services to which an LPS scheme applies<sup>19</sup>.

1 As to primary care trusts see PARA 111.

2 See the National Health Service Act 2006 s 144, Sch 12 para 1(1). As to the application of enactments see s 145; and PARA 416. As to persons performing services under an LPS scheme see s 146; and PARA 417. As to assistance and support in respect of such schemes see s 147; and PARA 418. As to the equivalent provision to the National Health Service Act 2006 Sch 12 in relation to Wales see the National Health Service (Wales) Act 2006 s 102, Sch 7. As to the meaning of 'Wales' see PARA 6 note 2.

3 In accordance with the National Health Service Act 2006 Sch 12: see below and PARA 432.

4 National Health Service Act 2006 Sch 12 para 1(2)(a).

5 'Local pharmaceutical services' means such services of a kind which may be provided under the National Health Service Act 2006 s 126 (see PARA 339), or by virtue of s 127 (see PARA 346) (other than practitioner dispensing services) as may be prescribed for these purposes: Sch 12 para 1(7). 'Practitioner dispensing services' means the provision of drugs, medicines or listed appliances (within the meaning given by s 126: see PARA 339 note 5) by a medical practitioner or dental practitioner to a patient of his pursuant to arrangements made by virtue of s 132(1) (see PARA 342): Sch 12 para 1(8). 'Prescribed' means prescribed by regulations: s 275(1). As to such regulations see PARA 432. As to the meaning of 'medicine' see PARA 339 note 4. As to the meaning of 'medical practitioner' see PARA 84 note 7. As to the meaning of 'dental practitioner' see PARA 87 note 7.

6 National Health Service Act 2006 Sch 12 para 1(2)(b).

7 National Health Service Act 2006 Sch 12 para 1(2)(c). Any person providing local pharmaceutical services under an LPS scheme established under the National Health Service Act 2006 Sch 12 or the National Health Service (Wales) Act 2006 Sch 7 is a public authority for the purposes of the Freedom of Information Act 2000 in respect of information relating to the provision of those services: see s 3, Sch 1 Pt III (amended by the Health

and Social Care Act 2001 Sch 5 Pt 1 para 14(1); National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 210, 211(m)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

8     le pharmaceutical services provided under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133): see PARAS 339-342, 346, 348.

9     National Health Service Act 2006 Sch 12 para 1(3)(a).

10    As to the meaning of 'person' see PARA 17 note 2.

11    National Health Service Act 2006 Sch 12 para 1(3)(b).

12    As to primary medical services see PARA 241.

13    National Health Service Act 2006 Sch 12 para 1(4). As to primary dental services see PARA 277.

14    le under the National Health Service Act 2006 s 126: see PARA 339.

15    National Health Service Act 2006 Sch 12 para 1(5).

16    As to the meaning of 'functions' see PARA 6 note 3.

17    As to NHS trusts see PARA 155.

18    As to NHS foundation trusts see PARA 174.

19    National Health Service Act 2006 Sch 12 para 1(6).

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### **432. Regulations.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> allowing a primary care trust<sup>3</sup> to designate neighbourhoods<sup>4</sup>, premises<sup>5</sup>, or descriptions of premises<sup>6</sup>, for the purposes of an LPS scheme<sup>7</sup>. The regulations may, in particular, make provision: (1) as to the circumstances in which, and the neighbourhoods or premises in relation to which, designations may be made or maintained<sup>8</sup>; (2) allowing a primary care trust to defer consideration of pharmaceutical list applications<sup>9</sup> relating to neighbourhoods, premises or descriptions of premises that have been designated<sup>10</sup>; (3) allowing a designation to be cancelled in prescribed circumstances<sup>11</sup>; (4) requiring a designation to be cancelled if the Secretary of State gives a direction to that effect<sup>12</sup>, or in prescribed circumstances<sup>13</sup>.

The Secretary of State may make regulations with respect to LP services<sup>14</sup>. The regulations must include provision for participants other than primary care trusts to withdraw from an LPS scheme if they wish to do so<sup>15</sup>. The regulations may, in particular:

- 283 (a) provide that an LPS scheme may be made only in prescribed circumstances<sup>16</sup>; in relation to an area, a community or a category of persons<sup>17</sup> determined in accordance with the regulations<sup>18</sup>; or in relation to premises determined in accordance with the regulations<sup>19</sup>;
- 284 (b) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with an LPS scheme<sup>20</sup>;
- 285 (c) make provision as to the services, or categories of service, for which an LPS scheme must provide<sup>21</sup>;
- 286 (d) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons providing LP services<sup>22</sup>;
- 287 (e) require details of each LPS scheme to be published<sup>23</sup>;
- 288 (f) make provision with respect to the variation and termination of an LPS scheme<sup>24</sup>;
- 289 (g) prevent (except in such circumstances and to such extent as may be prescribed) the provision of both LP services and pharmaceutical services<sup>25</sup> from the same premises<sup>26</sup>;
- 290 (h) make provision with respect to the inclusion, removal, re-inclusion or modification of an entry in respect of premises in a pharmaceutical list<sup>27</sup>;
- 291 (i) provide for parties to an LPS scheme to be treated<sup>28</sup>, in such circumstances and to such extent as may be prescribed, as health service bodies<sup>29</sup>;
- 292 (j) provide for directions as to payments<sup>30</sup> to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court<sup>31</sup>;
- 293 (k) authorise primary care trusts to make payments of financial assistance for prescribed categories of preparatory work undertaken in connection with preparing proposals for an LPS scheme<sup>32</sup>, or in preparation for the provision of services under a proposed LPS scheme<sup>33</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Sch 12 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 7. As to the meaning of 'Wales' see PARA 6 note 2.

- 2 As to the making of regulations see PARA 9. As to the regulations which have been made see the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552; and PARAS 433-442.
- 3 As to primary care trusts see PARA 111.
- 4 National Health Service Act 2006 Sch 12 para 2(1)(a).
- 5 National Health Service Act 2006 Sch 12 para 2(1)(b).
- 6 National Health Service Act 2006 Sch 12 para 2(1)(c).
- 7 See the National Health Service Act 2006 Sch 12 para 2(1). As to the meaning of 'LPS scheme' see PARA 431.
- 8 National Health Service Act 2006 Sch 12 para 2(2)(a).
- 9 'Pharmaceutical list applications' means applications for inclusion in a pharmaceutical list: National Health Service Act 2006 Sch 12 para 2(3). As to the meaning of 'pharmaceutical list' see PARA 340 note 12.
- 10 National Health Service Act 2006 Sch 12 para 2(2)(b).
- 11 National Health Service Act 2006 Sch 12 para 2(2)(c). 'Prescribed' means prescribed by regulations: s 275(1).
- 12 National Health Service Act 2006 Sch 12 para 2(2)(d)(i).
- 13 National Health Service Act 2006 Sch 12 para 2(2)(d)(ii).
- 14 National Health Service Act 2006 Sch 12 para 3(1). 'LP services' means services provided under an LPS scheme, including any services to which the scheme applies as a result of Sch 12 para 1(3) (see PARA 431): Sch 12 para 1(7). As to the regulations which have been made see the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552; and PARAS 433-442.
- 15 National Health Service Act 2006 Sch 12 para 3(2).
- 16 National Health Service Act 2006 Sch 12 para 3(3)(a)(i).
- 17 As to the meaning of 'person' see PARA 17 note 2.
- 18 National Health Service Act 2006 Sch 12 para 3(3)(a)(ii).
- 19 National Health Service Act 2006 Sch 12 para 3(3)(a)(iii).
- 20 National Health Service Act 2006 Sch 12 para 3(3)(b).
- 21 National Health Service Act 2006 Sch 12 para 3(3)(c).
- 22 National Health Service Act 2006 Sch 12 para 3(3)(d).
- 23 National Health Service Act 2006 Sch 12 para 3(3)(e).
- 24 National Health Service Act 2006 Sch 12 para 3(3)(f).
- 25 As to the meaning of 'pharmaceutical services' see PARA 339.
- 26 National Health Service Act 2006 Sch 12 para 3(3)(g).
- 27 National Health Service Act 2006 Sch 12 para 3(3)(h).
- 28 Ie for the purposes of the National Health Service Act 2006 s 9: see PARAS 228, 229.
- 29 National Health Service Act 2006 Sch 12 para 3(3)(i).
- 30 Ie payments made under the National Health Service Act 2006 s 9(11) (see PARA 229) as it has effect as a result of regulations made by virtue of Sch 12 para 3(3)(i) (see the text to note 29).
- 31 National Health Service Act 2006 Sch 12 para 3(3)(j). As to county courts see **COURTS** vol 10 (Reissue) PARA 701 et seq.

- 32 National Health Service Act 2006 Sch 12 para 3(3)(k)(i).
- 33 National Health Service Act 2006 Sch 12 para 3(3)(k)(ii).

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*(b) Designations*

**433. Designation of priority neighbourhoods or premises.**

A primary care trust<sup>1</sup> may designate neighbourhoods, premises or descriptions of premises for the purposes of LPS schemes<sup>2</sup>. A designation must designate the neighbourhood in which, or the premises or description of the premises at which, local pharmaceutical services<sup>3</sup> are to be provided under a proposal for an LPS scheme<sup>4</sup>, or LPS schemes that have been approved<sup>5</sup>. A designation must include details of the services to be provided under the relevant scheme, and must be made in writing<sup>6</sup> and dated<sup>7</sup>, and include a map showing the location of the neighbourhood or premises that have been designated<sup>8</sup>. A primary care trust must give notice of a designation which it has made to specified persons<sup>9</sup>.

A primary care trust may vary a designation<sup>10</sup> if: (1) where the designation relates to a neighbourhood, the LP services<sup>11</sup> to be provided under the relevant scheme are to be provided from part only of that neighbourhood<sup>12</sup>; (2) where the designation relates to premises, the LP services to be provided under the relevant scheme are to be provided from part only of those premises<sup>13</sup>; or (3) where the designation relates to a description of premises, the LP services to be provided under the relevant scheme are to be provided from certain parts only of the premises described<sup>14</sup>. A primary care trust must give notice of the variation to the specified persons<sup>15</sup>.

A primary care trust must make available for inspection at its offices copies of all the designations which it has made, including any variations of such designations<sup>16</sup>. Where a designation has been made or varied, the primary care trust may defer consideration of all other applications in respect of the designated neighbourhood, premises or descriptions of premises, until such time as the designation is cancelled<sup>17</sup>.

1 As to primary care trusts see PARA 111.

2 See the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). The National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(1) is expressed to be subject to the provisions of reg 4(2)-(9): see the text to notes 3-17. As to the meaning of 'LPS scheme' see PARA 431. As to transitional provisions in respect of designations made before 1 April 2006 (being the date on which the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, came into force) see reg 19. The National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, apply in relation to England only: reg 1(2). At the date at which this volume states the law no equivalent provision had been made in relation to Wales. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 'Local pharmaceutical services' means such services of a kind which may be provided under the National Health Service Act 2006 s 126 (see PARA 339), or by virtue of s 127 (see PARA 346), other than practitioner dispensing services: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(2). As to the meaning of 'practitioner dispensing services' see PARA 431 note 5.

4 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(3)(a).

5 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(3)(b). The proposed scheme or the approved schemes (collectively) are referred to as the 'relevant scheme': reg 4(3).

6 As to the meaning of 'writing' see PARA 7 note 2.

- 7 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(4)(a).
- 8 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(4)(b).
- 9 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(5). The specified persons are: (1) any local pharmaceutical committee, and any local medical committee, formed for the area of that primary care trust or of a neighbouring primary care trust that is likely to be affected by the designation (reg 4(5)(a), (b)); (2) any person whose name is included in the pharmaceutical list of that primary care trust or of a neighbouring primary care trust that is likely to be affected by the designation (reg 4(5)(c)); (3) any person who provides services under LPS arrangements or an LPS scheme in the locality of the primary care trust (reg 4(5)(d)); (4) any person whose name is included in the dispensing doctor list of that primary care trust or of a neighbouring primary care trust who, in the opinion of the primary care trust, is likely to be affected by the designation (reg 4(5)(e)). As to local pharmaceutical committees see PARA 351. As to local medical committees see PARA 272. As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'pharmaceutical list' see PARA 353: definition applied by reg 2(1). As to dispensing doctor lists see PARA 410.
- 10 A designation varied under the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(6) must designate the neighbourhood, premises or description of premises which are designated for the purposes of the designation and must satisfy the conditions specified in reg 4(4) (see the text to notes 6-8): reg 4(7).
- 11 As to the meaning of 'LP services' see PARA 432 note 14.
- 12 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(6)(a).
- 13 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(6)(b).
- 14 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(6)(c).
- 15 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(8). As to the specified persons see note 9.
- 16 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(9).
- 17 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(2). As to the review of designations see PARA 434. As to the cancellation of designations see PARA 435.

## UPDATE

### 433 Designation of priority neighbourhoods or premises

NOTE 9--The specified persons are now: (1) the local pharmaceutical committee formed for the area of that primary care trust and the local pharmaceutical committee of any neighbouring primary care trust that is likely to be affected by the designation; (2) any local medical committee formed for the area of that primary care trust and any local medical committee of any neighbouring primary care trust that is likely to be affected by the designation; (3) any person whose name is included in the pharmaceutical list of that primary care trust and any person whose name is included in the pharmaceutical list of any neighbouring primary care trust that is likely to be affected by the designation; (4) any person who provides local pharmaceutical services under arrangements with the primary care trust within its locality; (5) any person whose name is included in the dispensing doctor list of that primary care trust and any person whose name is included in the dispensing doctor list of any neighbouring primary care trust who is likely to be affected by the designation; (6) any local involvement network of a relevant local authority, as the primary care trust considers appropriate; and (7) any other primary care trust likely to be affected by the designation: SI 2006/552 reg 4(5) (substituted by SI 2009/599). 'Local involvement network' means a person who in pursuance of arrangements under the Local Government and Public Involvement in Health Act 2007 s 221(1) (see PARA 526) is to carry on the activities specified in the 2007 Act s 221(2); and 'relevant local authority', in relation to a primary care trust,

means a local authority whose area falls, wholly or partly, within the area of that primary care trust: SI 2006/552 reg 2(1) (definitions added by SI 2009/599).

TEXT AND NOTE 17--SI 2006/552 reg 4(2) does not apply to the following types of applications: (1) an application for a change of ownership; (2) an application from a nominated person for temporary inclusion to provide services in place of a pharmacist who has been suspended; (3) an application to exercise a right of return after ceasing to provide local pharmaceutical services; (4) an application where preliminary consent has already been granted and any conditions imposed by the primary care trust are satisfied; and (5) an application for inclusion in the pharmaceutical list received more than 120 days prior to the date of designation: SI 2006/552 reg 4(2A) (added by SI 2009/599).



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#### **434. Reviews of designations.**

A primary care trust<sup>1</sup> must regularly review a designation of priority neighbourhoods or premises<sup>2</sup> which it has made or varied<sup>3</sup>. A primary care trust must conduct a review of a designation before the end of the period of six months<sup>4</sup> beginning with the date of that designation or (as the case may be) the date of the last review of that designation<sup>5</sup>. When conducting a review of a designation, a primary care trust must take into account representations received from any of the specified persons<sup>6</sup>; and a primary care trust must notify the specified persons of the outcome of the review<sup>7</sup>.

1 As to primary care trusts see PARA 111.

2 I.e. a designation made or varied under the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4: see PARA 433.

3 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 5(1). As to the application of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, see PARA 433 note 2.

4 As to the meaning of 'month' see PARA 28 note 16.

5 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 5(2).

6 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 5(3). The specified persons are those listed in reg 4(5): see PARA 433 note 9. As to the meaning of 'person' see PARA 17 note 2.

7 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 5(4).

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### **435. Cancellation of designations.**

A primary care trust<sup>1</sup> may at any time cancel a designation of priority neighbourhoods or premises<sup>2</sup> which it has made or varied<sup>3</sup>. A primary care trust must cancel a designation which it has made or varied: (1) if required to do so by a direction given by the Secretary of State<sup>4</sup>; (2) if, within a period of 12 months<sup>5</sup> beginning with the date of the original designation, an application for an LPS scheme<sup>6</sup> that relates to the designation has not been submitted to the primary care trust for approval<sup>7</sup>; (3) if the only (or only remaining) application for an LPS scheme that relates to the designation has been rejected<sup>8</sup>; or (4) if there is a significant change to the neighbourhood in which, or the premises from which, the LP services<sup>9</sup> are to be provided, other than a change which leads<sup>10</sup> to a variation<sup>11</sup>. Where a primary care trust has cancelled a designation, it may not designate the same neighbourhood, premises or description of premises within a period of six months beginning with the date of cancellation of the designation, except where the reason for the cancellation of the designation was the rejection of an application for an LPS scheme<sup>12</sup>.

A primary care trust must give notice of cancellation of a designation to the specified persons<sup>13</sup>.

1 As to primary care trusts see PARA 111.

2 I.e. a designation made or varied under the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4: see PARA 433.

3 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 6(1). As to the application of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, see PARA 433 note 2.

4 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 6(2)(a). As to the Secretary of State see PARA 6 note 8.

5 As to the meaning of 'month' see PARA 28 note 16.

6 As to the meaning of 'LPS scheme' see PARA 431.

7 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 6(2)(b).

8 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 6(2)(c).

9 As to the meaning of 'LP services' see PARA 432 note 14.

10 I.e. by virtue of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 4(6): see PARA 433.

11 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 6(2)(d).

12 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 6(4).

13 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 6(3). The specified persons are those listed in reg 4(5): see PARA 433 note 9. As to the meaning of 'person' see PARA 17 note 2.

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*(c) Contractors*

**436. General condition relating to all schemes.**

A primary care trust<sup>1</sup> may only enter into an LPS scheme<sup>2</sup> with: (1) an individual, if that individual does not fall within the specified categories<sup>3</sup>; (2) two or more individuals (whether or not practising in partnership), if each of those individuals does not fall within those categories<sup>4</sup>; and (3) in the case of a body corporate, if the body corporate<sup>5</sup>, or any director, chief executive, superintendent<sup>6</sup> or company secretary of the body corporate<sup>7</sup>, does not fall within those categories<sup>8</sup>.

A person<sup>9</sup> falls within the specified categories if:

- 294 (a) he is the subject of national disqualification<sup>10</sup>;
- 295 (b) he is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing or regulatory body<sup>11</sup> anywhere in the world<sup>12</sup>;
- 296 (c) he has within a period of five years prior to the date the scheme is to be commenced or, if earlier, the date on which the scheme is to be signed, been removed from, or refused admission to, a primary care list<sup>13</sup> by reason of inefficiency, fraud or unsuitability<sup>14</sup>, unless his name has subsequently been included in such a list<sup>15</sup>;
- 297 (d) he has been convicted in the United Kingdom of murder<sup>16</sup>, or a criminal offence other than murder, committed on or after 1 April 2006, and has been sentenced to a term of imprisonment of over six months<sup>17</sup>;
- 298 (e) he has been convicted elsewhere of an offence which would, if committed in England and Wales<sup>18</sup>, constitute murder<sup>19</sup>, or committed on or after the 1 April 2006 which would, if committed in England and Wales, constitute a criminal offence other than murder, and has been sentenced to a term of imprisonment of over six months<sup>20</sup>;
- 299 (f) he has been convicted of an offence<sup>21</sup> against children and young persons committed on or after 1 April 2006<sup>22</sup>;
- 300 (g) he has been convicted of an offence under the Sexual Offences Act 2003 Part 2<sup>23</sup> committed on or after 1 April 2006<sup>24</sup>;
- 301 (h) he has: (i) been adjudged bankrupt, or sequestration of his estate has been awarded, unless (in either case) he has been discharged or the bankruptcy order has been annulled<sup>25</sup>; (ii) been made<sup>26</sup> the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order<sup>27</sup>; (iii) made a composition or arrangement with, or granted a trust deed for, his creditors unless he has been discharged in respect of it<sup>28</sup>; or (iv) in the case of a body corporate, been wound up<sup>29</sup>;
- 302 (i) there is an administrator, administrative receiver or receiver appointed in respect of him<sup>30</sup>, or an administration order made<sup>31</sup> in respect of him<sup>32</sup>;
- 303 (j) he has within the period of five years prior to the date the scheme is to be commenced or, if earlier, the date on which the scheme is to be signed been removed from the office of charity trustee or trustee for the charity by an order made by the Charity Commissioners or the High Court on the grounds of any

- misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed or facilitated<sup>33</sup>; or been removed in Scotland<sup>34</sup> from being concerned in the management or control of any charitable body<sup>35</sup>;
- 304 (k) he has within the period of five years prior to the date the scheme is to be commenced or, if earlier, the date on which the scheme is to be signed, been subject to a disqualification order<sup>36</sup>, or to an order<sup>37</sup> made in respect of a failure to pay under a county court administration order<sup>38</sup>; or
- 305 (l) he (in the case of an individual) has refused to comply with a request by the primary care trust for him to be medically examined on the grounds that it is concerned that he is incapable of adequately providing services under the scheme<sup>39</sup>.

Where a primary care trust is of the view that a person proposing to enter into an LPS scheme does not meet the statutory conditions<sup>40</sup>, it must notify that person of its view, the reasons for that view and of his right of appeal<sup>41</sup>. A person who has been served with such a notice may appeal to the Family Health Services Appeal Authority against the decision of the primary care trust that the statutory conditions are not met by giving notice in writing<sup>42</sup> to the Family Health Services Appeal Authority within the period of 28 days beginning on the day that the primary care trust served its notice<sup>43</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'LPS scheme' see PARA 431.

3 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(1)(a). The specified categories are those referred to in reg 7(2): see the text to notes 9-39. As to the application of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, see PARA 433 note 2.

4 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(1)(b).

5 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(1)(c)(i).

6 'Superintendent' has the same meaning as it has in the Medicines Act 1968 s 71 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 912): National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1).

7 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(1)(c)(ii).

8 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(1)(c).

9 As to the meaning of 'person' see PARA 17 note 2.

10 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(a). 'National disqualification' means: (1) a decision made by the Family Health Services Appeal Authority under the National Health Service Act 2006 s 159 (see PARA 402) in relation to a person who has been removed from a pharmaceutical list; (2) a decision under provisions in force in Scotland or Northern Ireland corresponding to s 159; or (3) a decision which is treated as a national disqualification by the Family Health Services Appeal Authority by virtue of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001, SI 2001/3744, reg 4: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1). As to the Family Health Services Appeal Authority see PARA 443. As to the meaning of 'pharmaceutical list' see PARA 353: definition applied by reg 2(1).

11 'Licensing or regulatory body' means a body that licenses or regulates any profession of which a person is or has been a member, and includes any body which licenses or regulates such a profession in a country other than the United Kingdom: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1). As to the meaning of 'United Kingdom' see PARA 15 note 8.

12 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(b). A person does not fall within reg 7(2)(b) where the primary care trust is satisfied that the disqualification or

suspension from practising imposed by a licensing or regulatory body outside the United Kingdom does not make the person unsuitable to be a party to an LPS scheme (reg 7(3)(a)); or in the case of an LPS scheme with a body corporate, a director, chief executive, superintendent or company secretary of a party to an LPS scheme (reg 7(3)(b)).

13 'Primary care list' means: (1) a list of persons performing primary medical or dental services under the National Health Service Act 2006 s 91 (see PARA 248) or s 106 (see PARA 283); (2) a list of persons undertaking to provide general ophthalmic services or, as the case may be, pharmaceutical services prepared in accordance with regulations made under the National Health Service (Wales) Act 2006 s 72 (see PARA 338) or the National Health Service Act 2006 s 129 (see PARA 340) or s 132 (see PARA 342); (3) a list of persons who undertook to provide general medical services or general dental services prepared in accordance with regulations made under the National Health Service Act 1977 s 29 or 35 (both repealed); (4) a list of persons approved for the purposes of assisting in the provision of any services mentioned in head (2) or (3) above prepared in accordance with regulations made under the National Health Service Act 2006 s 149 (see PARA 344); (5) a services list that fell within the meaning of the National Health Service (Primary Care) Act 1977 s 8ZA (repealed); (6) a list corresponding to a services list prepared by virtue of regulations made under the National Health Service Act 2006 s 145 (see PARA 416); or (7) a list corresponding to any of the above lists in Scotland or Northern Ireland: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

14 Ie inefficiency, fraud or unsuitability within the meaning of the National Health Service Act 2006 s 151(2), (3) or (4) respectively: see PARA 388.

15 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(c); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

16 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(d)(i). As to murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 89.

17 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(d)(ii).

18 As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

19 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(e)(i). A person does not fall within reg 7(2)(e) where the primary care trust is satisfied that the conviction does not make the person unsuitable to be a party to an LPS scheme (reg 7(4)(a)); or in the case of an LPS scheme with a body corporate, a director, chief executive, superintendent or company secretary of a party to an LPS scheme (reg 7(4)(b)).

20 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(e)(ii). See also note 19.

21 Ie an offence referred to in the Children and Young Persons Act 1933 Sch 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1164) or the Criminal Procedure (Scotland) Act 1995 Sch 1.

22 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(f).

23 Ie under the Sexual Offences Act 2003 Pt 2 (ss 80-136): see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 560.

24 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(g).

25 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(h)(i). As to bankruptcy and arrangements and compositions with creditors see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

26 Ie under the Insolvency Act 1986 Sch 4A: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

27 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(h)(ii).

28 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(h)(iii).

29 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(h)(iv). The reference to being wound up is to a winding up under the Insolvency Act 1986 Pt IV (ss 73-219): see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 433 et seq.

- 30 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(i)(i).
- 31 le under the Insolvency Act 1986 Sch B1.
- 32 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(i)(ii).
- 33 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(j)(i).  
As to the removal from office of a charity trustee or trustee for a charity see **CHARITIES** vol 8 (2010) PARAS 294, 566. As to the Charity Commissioners see **CHARITIES** vol 8 (2010) PARA 538 et seq.
- 34 le under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 s 7 (powers of the Court of Session to deal with management of charities).
- 35 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(j)(ii).
- 36 le under the Company Directors Disqualification Act 1986 (see **COMPANIES** vol 15 (2009) PARA 1575 et seq) or the Companies (Northern Ireland) Order 1986, SI 1986/1032 (NI 6).
- 37 le made under the Insolvency Act 1986 s 429(2)(b): see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 910.
- 38 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(k).
- 39 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7(2)(l).
- 40 le the conditions in the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 7: see the text to notes 1-39.
- 41 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 8 (amended by SI 2006/3373).
- 42 As to the meaning of 'writing' see PARA 7 note 2.
- 43 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 9.

## **UPDATE**

### **436 General condition relating to all schemes**

NOTE 13--Definition of 'primary care list' amended in relation to England: SI 2008/1700.

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### **437. Health service body status.**

A contractor<sup>1</sup> must be treated as a health service body<sup>2</sup> from the date it makes an LPS scheme unless, prior to making the scheme, it objected in a written<sup>3</sup> notice served on the primary care trust with which it subsequently made the scheme<sup>4</sup>. A contractor may at any time request a variation of the LPS scheme to include or remove provision from the scheme that the scheme is an NHS contract<sup>5</sup>, and if it does so the primary care trust must agree to the variation<sup>6</sup>. Where, pursuant to such a request, the primary care trust agrees to a variation of the scheme, the contractor must be treated<sup>7</sup>, or cease to be treated<sup>8</sup>, as a health service body from the date that variation takes effect<sup>9</sup>.

A contractor that is to be treated as a health service body<sup>10</sup> ceases to be so treated if the scheme is terminated<sup>11</sup>.

1 'Contractor' means the party or parties to an LPS scheme which is or are not the primary care trust: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1). As to the meaning of 'LPS scheme' see PARA 431. As to primary care trusts see PARA 111. As to the application of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, see PARA 433 note 2.

2 Ie for the purposes of the National Health Service Act 2006 s 9: see PARAS 228, 229.

3 As to the meaning of 'written' see PARA 7 note 2.

4 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). Where a contractor is to be so treated as a health service body, any change in the parties comprising the contractor does not affect the health service body status of the contractor: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10(2). If, pursuant to reg 10(1) or (4) (see the text to notes 5-6), a contractor is to be treated as a health service body, that fact does not affect the nature of, or any rights or liabilities arising under, any other scheme or contract with a health service body entered into by that contractor before the date on which the contractor is to be so regarded: reg 10(3).

5 As to the meaning of 'NHS contract' see PARA 228.

6 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10(4)(a). In such a case the procedure relating to the variation of contract terms (see Sch 2 para 26) applies: see reg 10(4)(b).

7 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10(5)(a).

8 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10(5)(b). This provision is expressed to be subject to reg 10(7): see note 11.

9 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10(5).

10 Ie pursuant to the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10(1) (see the text to notes 1-4) or (4) (see the text to notes 5-6), as the case may be.

11 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 10(6). Where a contractor ceases to be treated as a health service body pursuant to:

33 (1) reg 10(5) (see the text to notes 7-9) or (6), it continues to be treated as a health service body for the purposes of being a party to any other NHS contract entered into after it was treated as a health service body but before the date on which the contractor ceased to be

treated as a health service body (for which purposes it ceases to be such a body on the termination of that NHS contract) (reg 10(7)(a));

- 34 (2) reg 10(5), it is, if it or the primary care trust has referred any matter to the NHS dispute resolution procedure (see Sch 2 para 22) before it ceases to be treated as a health service body, bound by the determination of the adjudicator (reg 10(7)(b)); or
- 35 (3) reg 10(6), it must continue to be treated as a health service body for the purposes of the NHS dispute resolution procedure where that procedure has been commenced before the termination of the scheme, or after the termination of the scheme, whether in connection with, or arising out of, the termination of the scheme or otherwise, for which purposes it ceases to be such a body on the conclusion of that procedure (reg 10(7)(c)).



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**438. Lists of contractors.**

The primary care trust<sup>1</sup> must publish lists of contractors<sup>2</sup> who provide local pharmaceutical services<sup>3</sup> in its area<sup>4</sup>, together with information about services that each contractor provides<sup>5</sup> and the days on which and times at which those services are provided<sup>6</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'contractor' see PARA 437 note 1.

3 As to the meaning of 'local pharmaceutical services' see PARA 433 note 3.

4 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 11. As to the application of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, see PARA 433 note 2.

5 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 11(a).

6 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 11(b).

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*(d) Schemes*

**439. Proposals.**

A primary care trust<sup>1</sup> may make payments of financial assistance in respect of developing LPS schemes<sup>2</sup> with a view to their being included in a proposal for an LPS scheme<sup>3</sup>.

Any person<sup>4</sup> proposing to enter into an LPS scheme must supply with his proposal in writing<sup>5</sup> information as to whether he, or in the case of a partnership the partners in the partnership, or where the person is a body corporate, the body corporate or any of its directors, its chief executive, its company secretary or its superintendent<sup>6</sup>:

- 306 (1) has any criminal convictions in the United Kingdom<sup>7</sup>;
- 307 (2) has accepted a police caution in the United Kingdom<sup>8</sup>;
- 308 (3) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction)<sup>9</sup>;
- 309 (4) has, in Scotland, accepted a conditional offer<sup>10</sup> or agreed to pay a penalty<sup>11</sup> as alternative to prosecution<sup>12</sup>;
- 310 (5) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales<sup>13</sup>;
- 311 (6) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the primary care trust<sup>14</sup>;
- 312 (7) has been subject to any investigation into his professional conduct by any licensing or regulatory body<sup>15</sup>, where the outcome was adverse<sup>16</sup>;
- 313 (8) is currently subject to any investigation into his professional conduct by any licensing or regulatory body<sup>17</sup>;
- 314 (9) is, or has been where the outcome was adverse, the subject of any investigation into his professional conduct in respect of any current or previous employment<sup>18</sup>;
- 315 (10) is the subject of any investigation by another primary care trust or equivalent body<sup>19</sup>, which might lead to his removal from any primary care list<sup>20</sup>;
- 316 (11) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud and Security Management Service<sup>21</sup> or the NHS Business Services Authority in relation to fraud<sup>22</sup>;
- 317 (12) either: (a) has been removed or contingently removed from, refused admission to, or conditionally included in, any primary care list kept by another primary care trust or equivalent body<sup>23</sup>; or (b) is currently suspended from such a list<sup>24</sup>, on fitness to practise grounds, and if so, why and the name of that primary care trust or equivalent body<sup>25</sup>; or
- 318 (13) is, or ever has been, subject to a national disqualification<sup>26</sup>;

and if so, he must give details of any investigation or proceedings which are being or were undertaken or brought, including the nature of that investigation or proceedings, where and approximately when that investigation or those proceedings commenced, and any outcome<sup>27</sup>.

- 1 As to primary care trusts see PARA 111.
- 2 As to the meaning of 'LPS scheme' see PARA 431.
- 3 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(1). As to the application of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, see PARA 433 note 2.
- 4 As to the meaning of 'person' see PARA 17 note 2.
- 5 As to the meaning of 'writing' see PARA 7 note 2.
- 6 As to the meaning of 'superintendent' see PARA 436 note 6.
- 7 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(a). As to the meaning of 'United Kingdom' see PARA 15 note 8.
- 8 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(b). As to police cautions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 1045.
- 9 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(c).
- 10 Ie under the Criminal Procedure (Scotland) Act 1995 s 302.
- 11 Ie under the Social Security Administration Act 1992 s 115A.
- 12 See the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(d).
- 13 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(e). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.
- 14 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(f).
- 15 As to the meaning of 'licensing or regulatory body' see PARA 436 note 11.
- 16 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(g).
- 17 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(h).
- 18 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(i).
- 19 'Equivalent body' means a local health board in Wales or, in relation to any time prior to 1 April 2003, a health authority in Wales; a health board or NHS trust in Scotland; a health and social services board in Northern Ireland; or in relation to any time prior to 1 October 2002, a health authority in England: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1). As to local health boards see PARA 75.
- 20 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(j). As to the meaning of 'primary care list' see PARA 436 note 13.
- 21 'National Health Service Counter Fraud and Security Management Service' means the special health authority of that name with responsibility for policy and operational matters relating to the prevention, detection and investigation of fraud or corruption and the management of security in the National Health Service, which was replaced on 1 April 2006 by the NHS Business Services Authority: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1). As to the NHS Business Services Authority see PARA 152. As to the special health authorities see PARA 136.
- 22 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(k).
- 23 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(l)(i).
- 24 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(l)(ii).
- 25 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(l).

26 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2)(m). As to the meaning of 'national disqualification' see PARA 436 note 10.

27 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 12(2).

## **UPDATE**

### **439-442 Proposals ... Sharing of information**

Where, during an emergency requiring the flexible provision of pharmaceutical services, arrangements for the provision of local pharmaceutical services are overridden by temporary arrangements (1) any proceedings with regard to the overridden arrangements are unaffected by that overriding, although they may need to be stayed during the emergency for other reasons; and (2) if as a result of those proceedings, the overridden arrangements require amendment before the end of the temporary arrangements, when the emergency ends, the reversion to the overridden arrangements is to be to the overridden arrangements as amended as a result of those proceedings: SI 2006/552 reg 16A (added by SI 2009/2205).

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#### **440. Terms.**

If the contractor<sup>1</sup> is to be treated as a health service body<sup>2</sup>, the LPS scheme<sup>3</sup> must state that the scheme is an NHS contract<sup>4</sup>. An LPS scheme must specify the services to be provided, which must include the dispensing of drugs<sup>5</sup>, and the address of each of the premises to be used by the contractor for the provision of LP services<sup>6</sup>. A scheme must, unless it is of a type and nature to which the particular term does not apply, contain the statutory terms<sup>7</sup>, or terms which make provision having the same effect as those terms<sup>8</sup>.

1 As to the meaning of 'contractor' see PARA 437 note 1.

2 As to health service body status see PARA 437.

3 As to the meaning of 'LPS scheme' see PARA 431.

4 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 13. As to the meaning of 'NHS contract' see PARA 228. As to the application of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, see PARA 433 note 2.

5 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 14(1)(a) (substituted by SI 2006/3373). 'Drugs' includes medicines: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1). As to the meaning of 'medicine' see PARA 339 note 4.

6 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 14(1)(b). As to the meaning of 'LP services' see PARA 432 note 14. As to transitional provisions relating to schemes in force on 31 March 2006 (being the day before the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, came into force) see reg 18.

7 As to the statutory terms see the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, Sch 2 (amended by SI 2006/3373).

8 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 14(2).

#### **UPDATE**

#### **439-442 Proposals ... Sharing of information**

Where, during an emergency requiring the flexible provision of pharmaceutical services, arrangements for the provision of local pharmaceutical services are overridden by temporary arrangements (1) any proceedings with regard to the overridden arrangements are unaffected by that overriding, although they may need to be stayed during the emergency for other reasons; and (2) if as a result of those proceedings, the overridden arrangements require amendment before the end of the temporary arrangements, when the emergency ends, the reversion to the overridden arrangements is to be to the overridden arrangements as amended as a result of those proceedings: SI 2006/552 reg 16A (added by SI 2009/2205).

#### **440 Terms**

TEXT AND NOTES--A primary care trust must notify specified persons and groups within 10 days of making a decision to select a proposal for an LPS scheme for development: see SI 2006/552 reg 14A (added by SI 2009/599).

NOTE 7--SI 2006/552 Sch 2 further amended: SI 2008/1514; SI 2009/309; SI 2009/2205.

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#### **441. Right of return to pharmaceutical lists.**

Before a primary care trust<sup>1</sup> enters into an LPS scheme<sup>2</sup>, it must determine whether the contractor<sup>3</sup> is to be given a right of return, subject to the statutory conditions<sup>4</sup>, if it makes an application for its name to be included in a primary care trust's pharmaceutical list<sup>5</sup> after ceasing to provide LP services<sup>6</sup>. Before an LPS scheme is varied so as to permit the provision of LP services from different, or additional premises, the primary care trust must consider how the variation affects (if at all) such a determination, and may make a further determination varying or cancelling a determination<sup>7</sup>. The primary care trust may at any time make a determination varying a determination about a contractor if it is asked to do so by the contractor<sup>8</sup>. Different determinations may be made with respect to different contractors providing LP services under the same LPS scheme<sup>9</sup>.

Before making any determinations, the primary care trust must publish the principles by reference to which it will make such determinations, and it may amend those principles from time to time<sup>10</sup>. The primary care trust must notify specified persons of any determination it makes<sup>11</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'LPS scheme' see PARA 431.

3 As to the meaning of 'contractor' see PARA 437 note 1.

4 I.e. the conditions specified in the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, reg 10(2): see PARA 359.

5 As to the meaning of 'pharmaceutical list' see PARA 353: definition applied by the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1).

6 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 15(1). As to the meaning of 'LP services' see PARA 432 note 14. As to the establishment of LPS schemes see PARA 431. As to the application of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, see PARA 433 note 2.

7 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 15(2). As to variations of schemes see PARA 433.

8 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 15(3).

9 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 15(6).

10 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 15(4).

11 See the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 15(5) (amended by SI 2006/3373). The specified persons are: (1) the contractor or proposed contractor; (2) contractors providing local pharmaceutical services in its locality; (3) any person included in its pharmaceutical list; (4) any local pharmaceutical committee formed for its area; (5) any local medical committee formed for its area; (6) any primary care trust or local health board any part of whose locality is within two kilometres of the premises of the relevant contractor: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 15(5)(za)-(e) (reg 15(5)(za) added by SI 2006/3373). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'local pharmaceutical services' see PARA 433 note 3. As to local pharmaceutical committees see PARA 351. As to local medical committees see PARA 272. As to the meaning of 'local health board' see PARA 17 note 13.

**UPDATE****439-442 Proposals ... Sharing of information**

Where, during an emergency requiring the flexible provision of pharmaceutical services, arrangements for the provision of local pharmaceutical services are overridden by temporary arrangements (1) any proceedings with regard to the overridden arrangements are unaffected by that overriding, although they may need to be stayed during the emergency for other reasons; and (2) if as a result of those proceedings, the overridden arrangements require amendment before the end of the temporary arrangements, when the emergency ends, the reversion to the overridden arrangements is to be to the overridden arrangements as amended as a result of those proceedings: SI 2006/552 reg 16A (added by SI 2009/2205).

**441 Right of return to pharmaceutical lists**

TEXT AND NOTES--Nothing in SI 2006/552 reg 15 prevents a primary care trust from making a temporary amendment to an LPS Scheme which the primary care trust is satisfied is necessary or expedient because of an emergency requiring the flexible provision of pharmaceutical services: reg 15(7) (reg 15(7)-(9) added by SI 2009/2205). 'Emergency requiring the flexible provision of pharmaceutical services' means an emergency declared by means of a direction to primary care trusts under the National Health Service Act 2006 s 8(1) (see PARA 16) to the effect that, as a result of the threatened damage to human welfare caused or which may be caused by the illness designated in the direction, primary care trusts must for a specified period exercise, or where a discretion is conferred, consider exercising, one or more of their functions under SI 2005/641 reg 7A, 60(8A) (see PARA 404) or 65A, Sch 1 para 25A or Sch 3 para 13A, subject to any conditions or limitations set out in the direction: SI 2005/641 reg 2(5) (meaning applied by SI 2006/552 reg 2 (as amended by SI 2009/2205)). In the circumstances described in SI 2006/552 reg 15(7), the primary care trust may make a temporary variation to a determination about a contractor, but (1) only for a specified period, which must not be longer than the specified period of the emergency given by the Secretary of State, which the primary care trust may extend or curtail in appropriate circumstances; and (2) the contractor may revert to the contractor's overridden determination before the end of the period specified by the primary care trust, on giving the primary care trust at least 24 hours notice: reg 15(8). There is no right of appeal under SI 2006/552 in respect of a decision to make or not to make or to curtail the duration of, a temporary variation to an LPS scheme made under reg 15(8): reg 15(9).

NOTE 11--Any local involvement network of a relevant local authority (for the meaning of which see PARA 433) is also a specified person: SI 2006/552 reg 15(5)(ea) (added by SI 2009/599).



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#### **442. Sharing of information.**

Where a relevant home primary care trust<sup>1</sup> receives information about criminal offences or professional conduct pursuant to a term of an LPS scheme<sup>2</sup>, it must consider that information and decide whether this raises any question about the contractor's suitability to be a contractor<sup>3</sup>, or the fitness to practise of a pharmacist employed or engaged by the contractor<sup>4</sup>. If a home primary care trust is of the opinion that the information does raise such a question, it must pass the information it has received to: (1) any other primary care trust with which the contractor has entered into, or has applied to enter into, LPS arrangements or an LPS scheme<sup>5</sup>; (2) any other primary care trust on whose pharmaceutical list<sup>6</sup> the contractor is included or has applied to be included<sup>7</sup>; and (3) where appropriate, to the Royal Pharmaceutical Society of Great Britain<sup>8</sup>. If any primary care trust receives information (whether pursuant to a term of an LPS scheme or otherwise) that raises any question about the fitness to practise of a pharmacist employed or engaged by a contractor or potential contractor, it must pass that information, where appropriate, to the Royal Pharmaceutical Society of Great Britain<sup>9</sup>.

1 'Relevant home primary care trust' means the primary care trust in which the registered office of the contractor is located: National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1), Sch 2 para 17(2). As to primary care trusts see PARA 111. As to the meaning of 'contractor' see PARA 437 note 1.

2 I.e. by virtue of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, Sch 2 para 16: see PARA 440. As to the meaning of 'LPS scheme' see PARA 431.

3 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 16(1)(a). As to the application of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, see PARA 433 note 2.

4 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 16(1)(b).

5 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 16(2)(a).

6 As to the meaning of 'pharmaceutical list' see PARA 353: definition applied by the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 2(1).

7 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 16(2)(b).

8 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 16(2)(c). As to the Royal Pharmaceutical Society of Great Britain see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 881 et seq.

9 National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, reg 16(3).

#### **UPDATE**

#### **439-442 Proposals ... Sharing of information**

Where, during an emergency requiring the flexible provision of pharmaceutical services, arrangements for the provision of local pharmaceutical services are overridden by temporary arrangements (1) any proceedings with regard to the overridden arrangements are unaffected by that overriding, although they may need to

be stayed during the emergency for other reasons; and (2) if as a result of those proceedings, the overridden arrangements require amendment before the end of the temporary arrangements, when the emergency ends, the reversion to the overridden arrangements is to be to the overridden arrangements as amended as a result of those proceedings: SI 2006/552 reg 16A (added by SI 2009/2205).

#### **442 Sharing of information**

TEXT AND NOTES 1-4--Where a primary care trust (1) terminates an LPS scheme on any ground specified in SI 2006/552 Sch 2 paras 29-31, it must consider whether its reasons for doing so raise any question about the contractor's suitability to be a contractor, or the fitness to practise of a pharmacist employed by the contractor; or (2) is entitled to or has served a notice on a contractor under Sch 2 paras 29-31 but the contractor's LPS scheme is terminated on other grounds, the primary care trust must consider whether the reasons why it served or was entitled to serve a notice under those provisions raise any question about the contractor's suitability to be a contractor, or the fitness to practise of a pharmacist employed by the contractor: reg 16(1A) (added by SI 2009/2205).

TEXT AND NOTE 5--For the words 'the information does raise such a question, it must pass the information it has received' read 'a question referred to in SI 2006/552 reg 16(1) or reg 16(1A) is raised, it must pass on its concerns and any relevant supporting evidence': SI 2006/552 reg 16(2) (amended by SI 2009/2205).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(6) FAMILY HEALTH SERVICES APPEAL AUTHORITY/(i) The Authority/443. The Family Health Services Appeal Authority.

## **(6) FAMILY HEALTH SERVICES APPEAL AUTHORITY**

### **(i) The Authority**

#### **443. The Family Health Services Appeal Authority.**

There continues to be a body known as the Family Health Services Appeal Authority<sup>1</sup>. The authority has such functions<sup>2</sup> as are conferred on it by the National Health Service Act 2006 or by any other enactment<sup>3</sup>. The Secretary of State<sup>4</sup> may direct<sup>5</sup> the authority to exercise any of his functions relating to the determination of appeals to him which are specified in the directions<sup>6</sup>. The Secretary of State may make available to the authority any facilities<sup>7</sup> provided by him or by an NHS trust<sup>8</sup> or special health authority<sup>9</sup> for any service under the National Health Service Act 2006, and the services of persons employed by the Secretary of State or by an NHS trust or special health authority<sup>10</sup>.

1 National Health Service Act 2006 s 169(1). As to the constitution of the Family Health Services Appeal Authority see PARA 444. The Family Health Services Appeal Authority is under the supervision of the Administrative Justice and Tribunals Council: see the Tribunals, Courts and Enforcement Act 2007 s 44, Sch 7 paras 12, 14; Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007, SI 2007/2951, art 2; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) para 57A.

2 As to the meaning of 'functions' see PARA 6 note 3.

3 National Health Service Act 2006 s 169(2). As to the meaning of 'enactment' see PARA 10 note 7.

4 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the provisions relating to the Family Health Services Appeal Authority: see PARA 6.

5 Such directions must be given by regulations or an instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2. At the date at which this volume states the law no such regulations had been made.

6 National Health Service Act 2006 s 169(3).

7 As to the meaning of 'facilities' see PARA 12 note 7.

8 As to NHS trusts see PARA 155.

9 As to the special health authorities see PARA 136.

10 National Health Service Act 2006 s 169(4). The provisions of s 81(1)-(3) (see PARA 237) apply in relation to the services of persons employed by a special health authority and made available under s 169(4) as they apply in relation to the services of officers of special health authorities to be made available under s 80 (see PARA 237): s 171(1). For the purposes of s 169(4), the Secretary of State may give directions to an NHS trust requiring it to make facilities or the services of persons available as mentioned there (s 171(2)(a)), but the provisions of s 81(1) and (2) apply in relation to the services of such persons as they apply in relation to the services of officers to be made available by virtue of s 80 (s 171(2)(b)). As to the meaning of 'officer' see PARA 28 note 5. Directions under s 171 must be given by an instrument in writing: see s 273(4); and PARA 9.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(6) FAMILY HEALTH SERVICES APPEAL AUTHORITY/(i) The Authority/444. Constitution.

#### 444. Constitution.

The Family Health Services Appeal Authority<sup>1</sup> consists of a president<sup>2</sup>, one or more deputy presidents<sup>3</sup>, and a number of other members<sup>4</sup>, all appointed by the Lord Chancellor on terms determined by him<sup>5</sup>. A person appointed as the president must have a ten year general qualification<sup>6</sup>, and a person appointed as a deputy president must have a seven year general qualification<sup>7</sup>. The qualifications which the other members must have in order to be eligible for appointment must be determined by the Lord Chancellor<sup>8</sup>.

Each person appointed must hold and vacate office in accordance with the terms of his appointment<sup>9</sup>, and may be removed from office by the Lord Chancellor, with the concurrence of the Lord Chief Justice<sup>10</sup>, on grounds of incapacity or misbehaviour<sup>11</sup>.

The president must arrange such training for himself and the other members of the authority as he considers appropriate<sup>12</sup>.

1 As to the Family Health Services Appeal Authority see PARA 443.

2 National Health Service Act 2006 Sch 13 para 1(a).

3 National Health Service Act 2006 Sch 13 para 1(b).

4 National Health Service Act 2006 Sch 13 para 1(c). The number of the other members must be determined by the Lord Chancellor after consulting the Secretary of State: Sch 13 para 2. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the provisions relating to the Family Health Services Appeal Authority: see PARA 6.

The other members must include at least one: (1) health care professional of each description prescribed under s 91 or the National Health Service (Wales) Act 2006 s 49 (see PARA 248), the National Health Service Act 2006 s 106 or the National Health Service (Wales) Act 2006 s 63 (see PARA 283), and the National Health Service Act 2006 s 123 (see PARA 335), provided that each such health care professional is included in a list under one of those sections (Sch 13 paras 6(1)(a), 22(a), (b)); (2) optometrist or medical practitioner providing general ophthalmic services under the National Health Service (Wales) Act 2006 (see PARA 338) (National Health Service Act 2006 Sch 13 para 6(1)(b)); and (3) registered pharmacist providing or assisting in the provision of pharmaceutical services under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 (National Health Service Act 2006 Sch 13 para 6(1)(c)(i)), or providing or performing local pharmaceutical services under those Acts (Sch 13 para 6(1)(c)(ii)). The other members must also include: (a) such number of persons with a seven year general qualification (construed as in Sch 13 para 3: see notes 6 and 7) as the Lord Chancellor considers appropriate bearing in mind the requirements of Sch 13 para 9 (see PARA 445) (Sch 13 para 6(2)(a)); and (b) a number of lay persons who do not fall within heads (1) to (3) above and who possess such qualifications and experience as the Lord Chancellor considers appropriate (Sch 13 para 6(2)(b)). As from a day to be appointed Sch 13 para 6(2)(a) is amended so as to read (a) such number of persons who satisfy the judicial appointment eligibility condition on a five-year basis as the Lord Chancellor considers appropriate bearing in mind the requirements of Sch 13 para 9: Sch 13 para 6(2)(a) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 s 50, Sch 10 Pt 1 para 44). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'registered pharmacist' see PARA 339 note 19. As to the meaning of 'pharmaceutical services' see PARA 339. As to the meaning of 'local pharmaceutical services' see PARA 419 note 5. See also note 5.

5 National Health Service Act 2006 Sch 13 para 1. As to such appointments see the Constitutional Reform Act 2005 ss 85-93, 96, Sch 14 Pt 3 (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 272, 274); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Any function of the Lord Chancellor under the National Health Service Act 2006 Sch 13 paras 1, 2, 4, 6, is a protected function and may not be transferred, modified, or abolished by order of the Lord Chancellor under the Constitutional Reform Act 2005 s 19(1): see s 19(5), Sch 7 para 4 (amended by the National Health Service (Consequential Provisions) Act 2006 ss 2, 6, Sch 1 paras 272, 273, Sch 4); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6     le within the meaning of the Courts and Legal Services Act 1990 s 71: see **LEGAL SERVICES** vol 65 (2008) PARA 742.

7     National Health Service Act 2006 Sch 13 para 3. As from a day to be appointed Sch 13 para 3 is substituted as follows: A person is eligible to be appointed as the president only if he satisfies the judicial appointment eligibility condition on a seven year basis; and a person is eligible to be appointed as a deputy president only if he satisfies the judicial appointment eligibility condition on a five year basis: Sch 13 para 3 (prospectively substituted by the Tribunals, Courts and Enforcement Act 2007 s 50, Sch 10 Pt 1 para 44). At the date at which this volume states the law no such day had been appointed. As to judicial appointment eligibility conditions see **COURTS**.

8     National Health Service Act 2006 Sch 13 para 4. See also note 5.

9     National Health Service Act 2006 Sch 13 para 5(a).

10    As to the Lord Chief Justice see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 303; **COURTS** vol 10 (Reissue) PARA 515.

11    National Health Service Act 2006 Sch 13 para 5(b).

12    National Health Service Act 2006 Sch 13 para 20.

## **UPDATE**

### **444 Constitution**

NOTES 4, 7--Appointed day is 21 July 2008: SI 2008/1653.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(6) FAMILY HEALTH SERVICES APPEAL AUTHORITY/(i) The Authority/445. Procedure.

#### **445. Procedure.**

The procedure of the Family Health Services Appeal Authority<sup>1</sup> is as it determines, subject to the following<sup>2</sup>.

The functions of the authority<sup>3</sup> must be exercised by panels consisting: (1) in the case of the Secretary of State's<sup>4</sup> functions relating to the determination of appeals<sup>5</sup>, of such one or more members as the president may choose<sup>6</sup>; and (2) in the case of other functions, of three members chosen by the president<sup>7</sup>; and, in either case, the president may include himself (or, in the case of a one-member panel, may constitute the panel)<sup>8</sup>. At least one member of each panel (or, in the case of a one-member panel, that member) must have a seven year general qualification<sup>9</sup>. Where a panel has more than one member: (a) the president must nominate one of the members as chairman<sup>10</sup>; (b) decisions must be taken by a majority of votes<sup>11</sup>; and (c) if there is a tie the chairman has a second vote as a casting vote<sup>12</sup>.

1 As to the Family Health Services Appeal Authority see PARA 443.

2 National Health Service Act 2006 Sch 13 para 7.

3 As to the functions of the Family Health Services Appeal Authority see PARA 443. As to the meaning of 'functions' see PARA 6 note 3.

4 As to the Secretary of State see PARA 6 note 8.

5 ie the functions referred to in the National Health Service Act 2006 s 169(3): see PARA 443.

6 National Health Service Act 2006 Sch 13 para 8(a). As to the membership of the authority and the president see PARA 444.

7 National Health Service Act 2006 Sch 13 para 8(b).

8 National Health Service Act 2006 Sch 13 para 8.

9 National Health Service Act 2006 Sch 13 para 9. This provision is expressed to be subject to Sch 13 para 10. A seven year general qualification is such a qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see **LEGAL PROFESSION** vol 65 (2008) PARA 742): National Health Service Act 2006 Sch 13 para 9. As from a day to be appointed Sch 13 para 9 is amended to read: Subject to Sch 13 para 10, at least one member of each panel (or, in the case of a one-member panel, that member) must satisfy the judicial appointment eligibility condition on a five year basis: Sch 13 para 9 (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 s 50, Sch 10 Pt 1 para 44). At the date at which this volume states the law no such day had been appointed. As to judicial appointment eligibility conditions see **COURTS**.

In the case of a panel constituted for the purposes: (1) of the National Health Service Act 2006 s 158 or the National Health Service (Wales) Act 2006 s 114 (see PARA 401), or the National Health Service Act 2006 s 159 or the National Health Service (Wales) Act 2006 s 115 (see PARA 402) (National Health Service Act 2006 Sch 13 paras 10(1)(a), 22(c), (d)); or (2) of regulations under s 91 or the National Health Service (Wales) Act 2006 s 49 (see PARA 248), the National Health Service Act 2006 s 106 or the National Health Service (Wales) Act 2006 63 (see PARA 283), or the National Health Service Act 2006 s 123 (see PARA 335), containing provision corresponding to the sections mentioned in head (1) above (Sch 13 paras 10(1)(b), 22(a), (b)), one member of the panel must have such a qualification (Sch 13 para 10(1)). Unless the president decides otherwise, in relation to such a panel: (a) if the practitioner is a health care professional of a description prescribed under s 91 or the National Health Service (Wales) Act 2006 s 49, the National Health Service Act 2006 s 106 or the National Health Service (Wales) Act 2006 63, or the National Health Service Act 2006 s 123, one member of the panel must be a health care professional of the same description (Sch 13 para 10(2)(a)); (b) if the practitioner is of a description referred to in Sch 13 para 6(1)(b) or (c) (see PARA 444), one member of the panel must be a practitioner of that description (Sch 13 para 10(2)(b)); and (c) the third member must neither fall within any of

Sch 13 para 6(1)(a)-(c) (see PARA 444) nor have a legal qualification (Sch 13 para 10(2)(c)). 'Practitioner' means the person whose case is before the authority: Sch 13 para 21.

10 National Health Service Act 2006 Sch 13 para 11(a).

11 National Health Service Act 2006 Sch 13 para 11(b).

12 National Health Service Act 2006 Sch 13 para 11(c).

## **UPDATE**

### **445 Procedure**

NOTE 9--Appointed day is 21 July 2008: SI 2008/1653.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(6) FAMILY HEALTH SERVICES APPEAL AUTHORITY/(i) The Authority/446. Rules.

#### **446. Rules.**

The Lord Chancellor<sup>1</sup> may make rules<sup>2</sup> as to the composition of panels<sup>3</sup>; the allocation to panels of cases, or of particular proceedings in any case<sup>4</sup>; and the procedure to be followed by a panel in considering any matter before it<sup>5</sup>. The Lord Chancellor must make rules: (1) giving each party to proceedings before a panel the opportunity of putting his case at a hearing<sup>6</sup>; (2) entitling each party to be legally represented at any hearing (whether it is held at the instance of the panel or of a party)<sup>7</sup>; and (3) securing that any hearing is held in public unless the practitioner<sup>8</sup> asks for it to be in private (a request which the panel must consider but need not grant)<sup>9</sup>.

The rules may, in particular, make provision: (a) as to the carrying out by a deputy president of functions of the president<sup>10</sup>; (b) as to how, and as to the time within which, an application to the Family Health Services Appeal Authority must be made, or an appeal to the authority must be brought (so far as the matter is not provided for in or by virtue of the National Health Service Act 2006 or any other Act)<sup>11</sup>; (c) for a period which must elapse before an application, or a further application<sup>12</sup>, may be made<sup>13</sup>; (d) as to the giving of notice of and reasons for, and the publication of, the panel's decision<sup>14</sup>; (e) for the giving by the panel of directions to the parties as to the conduct of the case, and for the consequences of failure to comply with such directions (which may include allowing or dismissing the appeal or application if the failure to comply was without reasonable excuse)<sup>15</sup>; (f) empowering a panel to require persons<sup>16</sup> to attend and give evidence or produce documents<sup>17</sup>; (g) about the admissibility of evidence<sup>18</sup>; and (h) enabling the panel to administer oaths<sup>19</sup>. No person may be required by virtue of any such rules to give any evidence or produce any document or other material which he could not be compelled to give or produce in civil proceedings in a court in England and Wales<sup>20</sup>.

1 As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. Any function of the Lord Chancellor under the National Health Service Act 2006 Sch 13 para 15 or 16 is a protected function and may not be transferred, modified, or abolished by order of the Lord Chancellor under the Constitutional Reform Act 2005 s 19(1): see s 19(5), Sch 7 para 4 (amended by the National Health Service (Consequential Provisions) Act 2006 ss 2, 6, Sch 1 paras 272, 273, Sch 4); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 Such rules must be made by statutory instrument: see the National Health Service Act 2006 s 272(2); and PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750 (see PARA 449 et seq) have effect under the National Health Service Act 2006 Sch 13.

3 National Health Service Act 2006 Sch 13 para 15(a). As to the exercise of the functions of the Family Health Services Appeal Authority by panels see PARA 445. As to the meaning of 'functions' see PARA 6 note 3. As to the Family Health Services Appeal Authority see PARA 443.

4 National Health Service Act 2006 Sch 13 para 15(b).

5 National Health Service Act 2006 Sch 13 para 15(c).

6 National Health Service Act 2006 Sch 13 para 16(a).

7 National Health Service Act 2006 Sch 13 para 16(b).

8 As to the meaning of 'practitioner' see PARA 445 note 9.

9 National Health Service Act 2006 Sch 13 para 16(c).



10 National Health Service Act 2006 Sch 13 para 17(a). As to the president and deputy presidents see PARA 444.

11 National Health Service Act 2006 Sch 13 para 17(b).

12 In an application or a further application under the National Health Service Act 2006 s 158(5)(a) or the National Health Service (Wales) Act 2006 s 114 (see PARA 401), or under any provision of regulations under the National Health Service Act 2006 s 91 or the National Health Service (Wales) Act 2006 s 49 (see PARA 248), the National Health Service Act 2006 s 106 or the National Health Service (Wales) Act 2006 s 63 (see PARA 283), the National Health Service Act 2006 s 123 (see PARA 335) or s 146 (see PARA 417) corresponding to that provision: Sch 13 paras 17(c), 22(a)-(c).

13 National Health Service Act 2006 Sch 13 para 17(c).

14 See the National Health Service Act 2006 Sch 13 para 17(d).

15 National Health Service Act 2006 Sch 13 para 17(e).

16 As to the meaning of 'person' see PARA 17 note 2.

17 National Health Service Act 2006 Sch 13 para 17(f).

18 National Health Service Act 2006 Sch 13 para 17(g).

19 National Health Service Act 2006 Sch 13 para 17(h). As to the meaning of 'oath' see PARA 28 note 15.

20 National Health Service Act 2006 Sch 13 para 18. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to evidence in civil proceedings see **CIVIL PROCEDURE** vol 11 (2009) PARA 758 et seq. As to the production of documents in civil proceedings see **CIVIL PROCEDURE** vol 11 (2009) PARA 538 et seq.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(6) FAMILY HEALTH SERVICES APPEAL AUTHORITY/(i) The Authority/447. Annual report.

#### **447. Annual report.**

The president<sup>1</sup> must, in respect of each period of 12 months<sup>2</sup> beginning on 1 April, prepare a written<sup>3</sup> report about the Family Health Services Appeal Authority's<sup>4</sup> activities during that period<sup>5</sup>. He must send a copy of the report to the Lord Chancellor<sup>6</sup>, the Secretary of State<sup>7</sup> and the Welsh Ministers<sup>8</sup>.

After consulting the Lord Chancellor and the Welsh Ministers, the Secretary of State<sup>9</sup> may give directions<sup>10</sup> to the president as to subjects with which the report must deal<sup>11</sup>.

1 As to the president see PARA 444.

2 As to the meaning of 'month' see PARA 28 note 16.

3 As to the meaning of 'written' see PARA 7 note 2.

4 As to the Family Health Services Appeal Authority see PARA 443.

5 National Health Service Act 2006 Sch 13 para 19(1).

6 As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

7 As to the Secretary of State see PARA 6 note 8.

8 National Health Service Act 2006 Sch 13 para 19(2). As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

9 The territorial limit on the exercise of the functions of the Secretary of State does not apply to the provisions relating to the Family Health Services Appeal Authority: see PARA 6.

10 Such directions must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9.

11 National Health Service Act 2006 Sch 13 para 19(3).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(6) FAMILY HEALTH SERVICES APPEAL AUTHORITY/(i) The Authority/448. Finance.

**448. Finance.**

The Secretary of State<sup>1</sup> may make such payments in respect of expenses incurred by the Family Health Services Appeal Authority<sup>2</sup> as he may determine<sup>3</sup>. The Secretary of State may pay to the members of the authority<sup>4</sup> such remuneration<sup>5</sup>, and such travelling and other allowances, including compensation for loss of remunerative time<sup>6</sup>, as he may determine<sup>7</sup>. Payments under these provisions are subject to such conditions as to records, certificates, or otherwise as the Secretary of State may determine<sup>8</sup>.

1 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply to the provisions relating to the Family Health Services Appeal Authority: see PARA 6.

2 As to the Family Health Services Appeal Authority see PARA 443.

3 National Health Service Act 2006 s 170(1).

4 As to the membership of the Family Health Services Appeal Authority see PARA 444.

5 National Health Service Act 2006 s 170(2)(a).

6 National Health Service Act 2006 s 170(2)(b).

7 National Health Service Act 2006 s 170(2).

8 National Health Service Act 2006 s 170(3).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(6) FAMILY HEALTH SERVICES APPEAL AUTHORITY/(ii) Appeals to the Authority/449. Time period for appeal and notice of appeal.

## **(ii) Appeals to the Authority**

### **449. Time period for appeal and notice of appeal.**

An appellant<sup>1</sup> who makes an FHS regulations appeal<sup>2</sup> must do so within the period of 28 days beginning with the date on which the primary care trust gave him notice of the disputed decision<sup>3</sup>. An appellant must make his appeal to the Family Health Services Appeal Authority by giving notice of appeal in writing<sup>4</sup> signed by the appellant or his representative<sup>5</sup>. The appellant must attach to his notice of appeal a copy of the disputed decision together with two copies of any documents on which he proposes to rely for the purposes of his appeal<sup>6</sup>, and must send or deliver his notice of appeal to the authority<sup>7</sup>.

The appellant may, at any time before he is notified of the date of the hearing<sup>8</sup> of his appeal, amend his notice of appeal, deliver a supplementary statement of grounds of appeal or send to the authority any other documents on which he proposes to rely<sup>9</sup>. The appellant may amend any notice of appeal or supplementary statement, with the leave of the panel to which the case has been allocated, at any time after he has been notified of the date of the hearing of the appeal, or at the hearing itself and the panel may grant such leave on such terms as it thinks fit<sup>10</sup>. The appellant must send a copy of every amendment and supplementary statement to the authority<sup>11</sup>.

1 'Appellant' means a person who makes an appeal to the Family Health Services Appeal Authority against a disputed decision: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1). As to the meaning of 'person' see PARA 17 note 2. As to the Family Health Services Appeal Authority see PARA 443. 'Disputed decision' means the decision of a health authority or primary care trust which is the subject of an appeal under the National Health Service Act 2006 s 158 or the National Health Service (Wales) Act 2006 s 114 (see PARA 401) or under the relevant FHS regulations: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1) (amended by SI 2002/2469); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). The Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, apply to England and Wales: r 1(2) (substituted by SI 2002/1921). As to primary care trusts see PARA 111. Health authorities were established for areas in Wales under the National Health Service Act 1977 s 8, Sch 5 (repealed). The functions of health authorities were subsequently transferred to the National Assembly for Wales by order made under the Government of Wales Act 1998 s 27 and thereafter to local health boards established under the National Health Service Act 1977 s 16BA, Sch 5B (both repealed) by the Local Health Boards (Establishment) (Wales) Order 2003, SI 2003/148, which, following the repeal of the National Health Service Act 1977, has effect under the National Health Service (Wales) Act 2006 s 11 (see PARA 74) by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to local health boards see PARA 75.

'FHS regulations' means any regulations conferring a right of appeal to the Family Health Services Appeal Authority under: (1) the National Health Service Act 2006 s 86 (see PARA 243), s 91 (see PARA 248), s 102 (see PARA 279), s 106 (see PARA 283), s 129 (see PARA 340), s 132 (see PARA 342), s 148 (see PARA 343), s 149 (see PARA 344) (or the equivalent provisions of the National Health Service (Wales) Act 2006); (2) the National Health Service Act 1977 s 39 (see PARA 295); or (3) the Health and Social Care (Community Health and Standards) Act 2003 s 200 (transitional provision): see the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1) (definition amended by SI 2002/1921; SI 2004/865; SI 2004/1016; SI 2006/562; SI 2006/946); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

2 'FHS regulations appeal' means an appeal made under FHS regulations against a disputed decision: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1).

3 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 5(1). The Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, Pt II (rr 5-14) applies only to appeals and Pt III (rr 15-28) (see PARAS 453-456) applies only to applications: r 4.

4 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 6(1). As to the meaning of 'writing' see PARA 7 note 2. The notice of appeal must state: the name and address of the appellant; his professional registration number where applicable; that the notice is a notice of appeal; the date of the disputed decision against which the appeal is brought; the full name and address of the health authority or primary care trust which gave the disputed decision; a concise statement of the grounds of the appeal; the name and address of his representative (if any) and whether the Family Health Services Appeal Authority should correspond with that representative concerning the appeal instead of with the appellant: r 6(2) (amended by SI 2002/2469). 'Professional registration number' means the number against a person's name in the register of the appropriate professional registration body: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1). 'Appropriate professional registration body' means the General Medical Council, the General Dental Council, the General Optical Council or the Royal Pharmaceutical Society of Great Britain, as the case may be: r 2(1). 'Representative' means a person, other than counsel, whom a party instructs to assist him in relation to an appeal or an application (as the case may be), whether or not that person is legally qualified: r 2(1). 'Party' means an appellant, or a respondent health authority or primary care trust under Pt II (rr 5-14) or an applicant or a respondent under Pt III (rr 15-28), as the case may be, and 'parties' must be construed accordingly: r 2(1) (definition amended by SI 2002/2469). As to the meaning of 'respondent health authority or primary care trust' see PARA 451 note 1. As to the General Medical Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 13 et seq. As to the General Dental Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 389 et seq. As to the General Optical Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 813 et seq. As to the Royal Pharmaceutical Society of Great Britain see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 881 et seq.

5 See the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 6(4).

6 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 6(3).

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 6(5).

8 'Hearing' means a sitting of a panel for the purpose of enabling the panel in question to reach or announce a decision: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1). 'Decision' (except in the expression 'disputed decision': see note 1) means any decision of a panel except where the context otherwise provides: r 2(1). As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

9 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 7(1).

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 7(2).

11 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 7(3).

## **UPDATE**

### **449 Time period for appeal and notice of appeal**

NOTE 1--Definition of 'FHS regulations' further amended in relation to England: SI 2008/1700. SI 2003/148 amended: SI 2009/778.

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**450. Application for directions and withdrawal of appeal.**

The appellant<sup>1</sup> may apply in writing<sup>2</sup> to the Family Health Services Appeal Authority<sup>3</sup> for directions<sup>4</sup> to be given as to any matter relating to the hearing<sup>5</sup> of his appeal<sup>6</sup>. The appellant may: (1) at any time before the hearing of the appeal withdraw his appeal by sending to the authority a notice stating he withdraws his appeal, signed by him or by his representative<sup>7</sup>; (2) at the hearing of the appeal, with the leave of the panel, withdraw his appeal<sup>8</sup>.

1 As to the meaning of 'appellant' see PARA 449 note 1.

2 As to the meaning of 'writing' see PARA 7 note 2.

3 As to the Family Health Services Appeal Authority see PARA 443.

4 'Directions' must be construed in accordance with the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, rr 31-33 (see PARA 458-459): r 2(1).

5 As to the meaning of 'hearing' see PARA 449 note 8.

6 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 8. As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 9(a). As to the meaning of 'representative' see PARA 449 note 4.

8 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 9(b). As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

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#### **451. Reply by respondent.**

Where a respondent health authority or primary care trust<sup>1</sup> receives a copy of a notice of appeal from the Family Health Services Appeal Authority<sup>2</sup> it must reply as follows<sup>3</sup>. The respondent health authority or primary care trust must send or deliver to the Family Health Services Appeal Authority a written<sup>4</sup> reply acknowledging service upon it of the notice of appeal<sup>5</sup>. Every such reply must be signed by an officer<sup>6</sup> of the respondent health authority or primary care trust who is authorised to sign such documents, or by its solicitor, and must be delivered to the Family Health Services Appeal Authority not later than 21 days after the date on which the copy of the notice of appeal was received by the health authority or primary care trust from the Family Health Services Appeal Authority<sup>7</sup>. The respondent health authority or primary care trust may include in its reply, or by way of a separate notice to the Family Health Services Appeal Authority, a request for further particulars of the appeal<sup>8</sup>.

The respondent health authority or primary care trust may at any time before it is notified of the date of the hearing<sup>9</sup> of the appeal amend its reply or deliver a supplementary statement by way of reply<sup>10</sup>. The respondent health authority or primary care trust may amend any reply or supplementary statement with the leave of the panel<sup>11</sup> to which the case has been allocated at any time after it has been notified of the date of the hearing of the appeal or at the hearing itself and the panel may grant such leave on such terms as it thinks fit<sup>12</sup>. The health authority or primary care trust must send a copy of every amendment and supplementary statement to the Family Health Services Appeal Authority<sup>13</sup>. The health authority or primary care trust may apply in writing to the Family Health Services Appeal Authority for directions<sup>14</sup> to be given as to any matter relating to the hearing of the appeal<sup>15</sup>.

1 'Respondent health authority or primary care trust' means the health authority or primary care trust which made a disputed decision: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1) (definition amended by SI 2002/2469). As to primary care trusts see PARA 111. As to the meaning of 'disputed decision', and as to health authorities see PARA 449 note 1.

2 In accordance with the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(3): see PARA 457. As to the Family Health Services Appeal Authority see PARA 443. As to notices of appeal see PARA 449.

3 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 12(1) (rr 12, 13 amended by SI 2002/2469). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

4 As to the meaning of 'written' see PARA 7 note 2.

5 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 12(2) (as amended: see note 3). The reply must state: (1) the appellant's professional registration number where applicable (r 12(2)(a)); (2) whether or not the authority or trust intends to oppose the appeal and if so, enclosing a brief statement of the grounds on which it relies in opposing the appeal (r 12(2)(b)); and (3) where it intends to instruct a representative in relation to the appeal, the name and address of the representative and whether such address is its address for service for the purposes of the appeal (r 12(2)(c)). The respondent health authority or primary care trust must include with its reply a statement summarising the facts relating to the disputed decision, and must send or deliver its reply to the Family Health Services Appeal Authority together with a copy of any document on which it proposes to rely: r 12(3) (as so amended). As to the meaning of 'professional registration number' see PARA 449 note 4. As to the meaning of 'representative' see PARA 449 note 4.

6 As to the meaning of 'officer' see PARA 28 note 5.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 12(4) (as amended: see note 3).

8 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 12(5) (as amended: see note 3).

9 As to the meaning of 'hearing' see PARA 449 note 8.

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 13(1) (as amended: see note 3).

11 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

12 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 13(2) (as amended: see note 3).

13 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 13(4) (as amended: see note 3).

14 As to the meaning of 'directions' see PARA 450 note 4.

15 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 13(3) (as amended: see note 3).



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#### **452. Notice of hearing, and representation at hearing.**

The Family Health Services Appeal Authority<sup>1</sup> must serve on the appellant<sup>2</sup> a notice informing him of the time and place of any oral hearing<sup>3</sup> which is to be held<sup>4</sup>. When the appellant receives the notice of the time and place of hearing, he must inform the Family Health Services Appeal Authority whether or not he intends to attend or be represented at the hearing and whether or not he intends to call any witnesses<sup>5</sup>. If the appellant does not intend to attend or be represented at the hearing, he may send to the Family Health Services Appeal Authority additional written<sup>6</sup> representations in support of his appeal<sup>7</sup>. At the hearing of an appeal or any other hearing in connection with an appeal including a hearing for directions<sup>8</sup>, the appellant may conduct his case himself (with assistance from his representative<sup>9</sup> if he wishes) or may appear and be represented by his representative or by counsel<sup>10</sup>.

When it receives a notice of the time and place of the hearing of the appeal, the respondent health authority or primary care trust<sup>11</sup> must inform the Family Health Services Appeal Authority whether or not it intends to attend or be represented at the hearing, and whether or not it intends to call witnesses<sup>12</sup>. If the health authority or primary care trust does not intend to attend or be represented at the hearing, it may send to the Family Health Services Appeal Authority additional written representations in support of its reply<sup>13</sup>. At the hearing of an appeal or any other hearing in connection with that appeal including a hearing for directions, the respondent health authority or primary care trust may conduct its case itself (with assistance from its representative if it wishes) or may appear and be represented by its representative or by counsel<sup>14</sup>.

1 As to the Family Health Services Appeal Authority see PARA 443.

2 As to the meaning of 'appellant' see PARA 449 note 1.

3 As to the meaning of 'hearing' see PARA 449 note 8.

4 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 10(1). Such notice must include guidance regarding the rules of evidence and procedure which apply to the hearing: r 10(2). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 10(3). Where the appellant does intend to call witnesses he must provide their names and addresses to the Family Health Services Appeal Authority: r 10(3).

6 As to the meaning of 'written' see PARA 7 note 2.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 10(4).

8 As to the meaning of 'directions' see PARA 450 note 4.

9 As to the meaning of 'representative' see PARA 449 note 4.

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 11.

11 As to the meaning of 'respondent health authority or primary care trust' see PARA 451 note 1.

12 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 14(2) (r 14 amended by SI 2002/2469). Where the health authority or primary care trust does intend to call witnesses, it must supply

their names and addresses to the Family Health Services Appeal Authority: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 14(2).

13 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 14(3) (as amended: see note 12). As to the reply see PARA 451.

14 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 14(1) (as amended: see note 12).

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### **(iii) Applications to the Authority**

#### **453. Applications in respect of contingent removal decisions.**

The following provisions apply to any application<sup>1</sup> in respect of a contingent removal decision<sup>2</sup>.

The first application in respect of such a decision may not be made until three months<sup>3</sup> have elapsed since the contingent removal decision was made<sup>4</sup>. Any further application in respect of the same contingent removal decision may not be made until six months have elapsed since the Family Health Services Appeal Authority gave its last decision in respect of such application or further application<sup>5</sup>.

Where the parties<sup>6</sup> wish to apply jointly to the Family Health Services Appeal Authority with a view to seeking the same variation of conditions<sup>7</sup>, the same imposition of different conditions<sup>8</sup>, or for the contingent removal to be revoked<sup>9</sup>, the application must be treated as being made by the health authority or primary care trust and may be made after a period of one month has elapsed since the Family Health Services Appeal Authority gave its decision in respect of an earlier application<sup>10</sup>.

1 In any application under the National Health Service Act 2006 s 158(5)(a) or the National Health Service (Wales) Act 2006 s 114(5)(a) (see PARA 401), or under regulations making provision corresponding to the National Health Service Act 2006 s 158 pursuant to s 91(4) (see PARA 248) or s 106(4) (see PARA 283), or under regulations making provision corresponding to the National Health Service (Wales) Act 2006 s 114 pursuant to s 49(4) (see PARA 248) or s 63(4) (see PARA 283): Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 15(1) (amended by SI 2004/865; SI 2004/1016); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

2 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 15(1). 'Contingent removal decision' means a decision by the Family Health Services Appeal Authority under the National Health Service Act 2006 s 158(5)(a) or the National Health Service (Wales) Act 2006 s 114(5)(a) (see PARA 401), or under regulations making provision corresponding to the National Health Service Act 2006 s 158 pursuant to s 91(4) (see PARA 248) or s 106(4) (see PARA 283), or under regulations making provision corresponding to the National Health Service (Wales) Act 2006 s 114 pursuant to s 49(4) (see PARA 248) or s 63(4) (see PARA 283), that a practitioner be removed contingently from a health authority or primary care trust list: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1) (definition amended by SI 2002/2469; SI 2004/865; SI 2004/1016). As to the Family Health Services Appeal Authority see PARA 443. As to primary care trusts see PARA 111. As to health authorities see PARA 449 note 1. As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

3 As to the meaning of 'month' see PARA 28 note 16.

4 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 15(2). This provision is expressed to be subject to r 15(4): see the text to notes 6-10.

5 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 15(3). This provision is expressed to be subject to r 15(4): see the text to notes 6-10.

6 As to the meaning of 'parties' see PARA 449 note 4.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 15(4)(a).

8 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 15(4)(b).

9 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 15(4)(c).

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 15(4) (amended by SI 2002/2469). An earlier application is one to which either the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 15(2) or (3) applied: see the text to notes 3-5.

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#### **454. Making an application.**

An applicant<sup>1</sup> must make an application as follows<sup>2</sup>. The application must be in writing<sup>3</sup>. The applicant or his representative must sign the notice of application and must send or deliver the application to the Family Health Services Appeal Authority within any specified<sup>4</sup> time limit<sup>5</sup>. The applicant must send or deliver to the Family Health Services Appeal Authority with the application a copy of every document on which he intends to rely for the purposes of the application<sup>6</sup>. The Family Health Services Appeal Authority must acknowledge receipt of the application and must inform the applicant or the applicant's representative of any further steps which must be taken to enable the Family Health Services Appeal Authority to decide the application and the time and place of any hearing<sup>7</sup> in respect of the application<sup>8</sup>.

The applicant may, at any time before being notified of the date of the hearing of the application, amend the application or deliver a supplementary statement in relation to that application<sup>9</sup>. The applicant may amend the application or supplementary statement with the leave of the panel<sup>10</sup> at any time after being notified of the date of the hearing of the application, or at the hearing itself, and the panel may grant such leave on such terms as it thinks fit<sup>11</sup>. The applicant must send a copy of every amendment and supplementary statement to the Family Health Services Appeal Authority<sup>12</sup>.

The applicant may apply in writing to the Family Health Services Appeal Authority for directions<sup>13</sup> to be given by a panel in respect of any matter relating to the hearing of the application<sup>14</sup>.

The applicant may: (1) at any time before the hearing of the application withdraw his application by sending to the Family Health Services Appeal Authority a notice stating that he withdraws it, signed by him or by his representative<sup>15</sup>; (2) at the hearing of the application, with the leave of the panel, withdraw the application<sup>16</sup>.

1 'Applicant' means (except where the context otherwise requires):

- 36 (1) a health authority or primary care trust which makes an application to the Family Health Services Appeal Authority for an order that a suspension be extended in accordance with the National Health Service Act 2006 s 154(6)(b) or the National Health Service (Wales) Act 2006 s 110(6)(b) (see PARA 394), or under regulations making provision corresponding to the National Health Service Act 2006 s 154 pursuant to s 91(3) (see PARA 248) or s 106(3) (see PARA 283), or under regulations making provision corresponding to the National Health Service (Wales) Act 2006 s 110 pursuant to s 49(3) (see PARA 248) or s 63(3) (see PARA 283);
- 37 (2) a health authority or primary care trust which makes an application to the Family Health Services Appeal Authority under the National Health Service Act 2006 s 159(4) or the National Health Service (Wales) Act 2006 s 115(4) (see PARA 402), or under regulations making provision corresponding to the National Health Service Act 2006 s 159 pursuant to s 91(3) or s 106(3), or under regulations making provision corresponding to the National Health Service (Wales) Act 2006 s 115 pursuant to s 49(3) or s 63(3), for a national disqualification to be imposed on a practitioner; or
- 38 (3) a health authority or primary care trust which makes, or a practitioner who makes, an application under the National Health Service Act 2006 s 158(5)(a) or the National Health Service (Wales) Act 2006 s 114(5)(a) (see PARA 401), or under regulations making provision corresponding to the National Health Service Act 2006 s 158 pursuant to s 91(3) or s 106(3), or under regulations making provision corresponding to the National Health Service (Wales) Act 2006 s 114 pursuant to s 49(3) or s 63(3), following a decision of the Family Health Services Appeal Authority that the practitioner be removed contingently,

as the case may be; and 'application', except in the expression 'application for directions' must be construed accordingly; and in the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, Pt III-Pt V (rr 15-47) in relation to a health authority or primary care trust, the words 'he', 'his' or 'himself' must, where relevant be construed as applying to that authority or trust: r 2(1), (2) (amended by SI 2002/2469; SI 2004/865; SI 2004/1016; SI 2005/3491). As to primary care trusts see PARA 111. As to health authorities see PARA 449 note 1. As to the Family Health Services Appeal Authority see PARA 443.

2 See the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 16(1). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

3 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 16(2). The application must state: (1) the name and address of the applicant and, where relevant, his professional registration number (r 16(2)(a)); (2) the name and address or addresses of the respondent and, where relevant, his professional registration number (r 16(2)(b)); (3) a concise statement of the grounds on which the application is made (r 16(2)(c)); and (4) the name and address of the representative of the applicant, if any, and whether the Family Health Services Appeal Authority should correspond with the representative concerning the application instead of with the applicant (r 16(2)(d)). As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'professional registration number' see PARA 449 note 4. 'Respondent' (except in the expression 'respondent health authority or primary care trust': see PARA 451 note 1) means the respondent to an application: r 2(1) (definition amended by SI 2002/2469). As to the meaning of 'representative' see PARA 449 note 4.

4 le specified by or under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006.

5 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 16(3).

6 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 17(1). The Family Health Services Appeal Authority may, on such terms as it thinks fit, excuse the applicant from providing any document required to be so furnished where that document or a copy is already held by it: r 17(2).

7 As to the meaning of 'hearing' see PARA 449 note 8.

8 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 16(4).

9 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 18(1).

10 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

11 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 18(2).

12 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 18(3).

13 As to the meaning of 'directions' see PARA 450 note 4.

14 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 19(1), (2).

15 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 20(a).

16 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 20(b).

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#### **455. Reply by respondent.**

A respondent<sup>1</sup> who receives from the Family Health Services Appeal Authority<sup>2</sup> a copy of an application<sup>3</sup> against him must send or deliver to the Family Health Services Appeal Authority a written<sup>4</sup> reply acknowledging receipt of that application<sup>5</sup>. The respondent may include in his reply a request for further particulars of the application<sup>6</sup>. The respondent must send or deliver to the Family Health Services Appeal Authority with his reply a copy of every document on which he intends to rely at the hearing<sup>7</sup> of the application<sup>8</sup>. Every such reply must be signed by the respondent or his representative and must be delivered to the Family Health Services Appeal Authority not later than 21 days after the date on which the notification of the application was sent to him by that authority<sup>9</sup>. A respondent who has not delivered a written reply is not entitled to take any part in the proceedings before the panel<sup>10</sup> on the application except: (1) to apply for an extension of time for presenting a reply<sup>11</sup>; (2) to apply for a direction<sup>12</sup> that the applicant provide further particulars relevant to the application<sup>13</sup>; (3) to be called as a witness by another party<sup>14</sup>; and (4) to be sent a copy of a decision or corrected decision<sup>15</sup>.

The respondent may, at any time before he is notified of the date of the hearing of the application, amend his reply or deliver a supplementary statement by way of reply<sup>16</sup>. The respondent may amend any reply or supplementary statement with the leave of a panel at any time after he has been notified of the hearing of the application or at the hearing itself<sup>17</sup>. The respondent must send a copy of every amendment and supplementary statement to the Family Health Services Appeal Authority<sup>18</sup>.

The respondent may apply in writing to the Family Health Services Appeal Authority for directions to be given by a panel as to any matter relating to the hearing of the application for disqualification<sup>19</sup>.

1 As to the meaning of 'respondent' see PARA 454 note 3.

2 In accordance with the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(3): see PARA 457. As to the Family Health Services Appeal Authority see PARA 443.

3 As to the meaning of 'application' see PARA 454 note 1.

4 As to the meaning of 'written' see PARA 7 note 2.

5 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 23(1). The reply must set out: (1) his full name and address and, where applicable, his professional registration number (r 23(1)(a)); (2) the professional registration number of the applicant, where applicable (r 23(1)(b)); (3) whether or not he intends to resist the application and if so, a concise statement of the grounds on which he relies in resisting it (r 23(1)(c)); (4) the name and address and the profession of his representative, if any, and whether the Family Health Services Appeal Authority should send notices concerning the application to the representative instead of to the respondent (r 23(1)(d)). As to the meaning of 'professional registration number' see PARA 449 note 4. As to the meaning of 'applicant' see PARA 454 note 1. As to the meaning of 'representative' see PARA 449 note 4. As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

6 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 23(2).

7 As to the meaning of 'hearing' see PARA 449 note 8.

8 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 24(1). The Family Health Services Appeal Authority may, on such terms as it thinks fit, excuse the respondent from providing any document required to be so furnished where that document, or a copy of it, is already held by it: r 24(2).

9 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 23(3). A reply which is received by the Family Health Services Appeal Authority after the time appointed by r 23 which contains reasons on which the respondent relies for justifying the delay must be deemed to include an application for an extension of the time so appointed: r 23(4).

10 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

11 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 23(5)(a).

12 As to the meaning of 'directions' see PARA 450 note 4.

13 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 23(5)(b).

14 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 23(5)(c). As to the meaning of 'party' see PARA 449 note 4.

15 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 23(5)(d). As to the meaning of 'decision' see PARA 449 note 8.

16 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 25(1).

17 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 25(2).

18 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 25(3).

19 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 26(1), (2).



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#### **456. Notice of hearing, and representation at hearing.**

The Family Health Services Appeal Authority<sup>1</sup> must serve on the applicant<sup>2</sup> a notice giving the time and place of any oral hearing<sup>3</sup> which is to be held<sup>4</sup>. When the applicant receives the notice of the time and place of hearing, he must inform the Family Health Services Appeal Authority whether or not he intends to be represented at the hearing and whether or not he intends to call witnesses, and where he does intend to call witnesses, he must supply their names and addresses to that authority<sup>5</sup>. If the applicant does not intend to attend or be represented at the hearing, he may send to the Family Health Services Appeal Authority additional written<sup>6</sup> representations in support of his application<sup>7</sup>. At the hearing of an application or any other hearing in connection with that application, including a hearing for directions<sup>8</sup>, the applicant may conduct his case himself (with assistance from his representative<sup>9</sup> if he wishes) or may appear and be represented by his representative or by counsel<sup>10</sup>.

The Family Health Services Appeal Authority must serve on a respondent<sup>11</sup> who opposes the application a notice informing him of the time and place of any oral hearing which is to be held and such notice will include guidance regarding the rules of evidence and procedure which apply to the hearing<sup>12</sup>. When the respondent receives the notice of the time and place of hearing, he must inform the Family Health Services Appeal Authority whether or not he intends to attend or be represented at the hearing, and whether he intends to call witnesses, and where he does intend to call witnesses he must supply their names and addresses to that authority<sup>13</sup>. If the respondent does not intend to attend or be represented at the hearing, he may send to the Family Health Services Appeal Authority additional written representations in support of his reply<sup>14</sup>. At the hearing of an application or any other hearing in connection with that application, including a hearing for directions, the respondent may conduct his case himself (with assistance from his representative if he wishes) or may appear and be represented by his representative or by counsel<sup>15</sup>.

1 As to the Family Health Services Appeal Authority see PARA 443.

2 As to the meaning of 'applicant' see PARA 454 note 1.

3 As to the meaning of 'hearing' see PARA 449 note 8.

4 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 21(1). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 21(2).

6 As to the meaning of 'written' see PARA 7 note 2.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 21(3). As to the meaning of 'application' see PARA 454 note 1.

8 As to the meaning of 'directions' see PARA 450 note 4.

9 As to the meaning of 'representative' see PARA 449 note 4.

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 22.

11 As to the meaning of 'respondent' see PARA 454 note 3.

- 12 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 27(1).
- 13 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 27(2).
- 14 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 27(3). As to the reply see PARA 455.
- 15 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 28.

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#### **(iv) General Matters relating to Cases**

##### **457. Acknowledgement and registration of appeal or application.**

Upon receiving a notice of appeal<sup>1</sup> or notice of application<sup>2</sup>, as the case may be, the Family Health Services Appeal Authority<sup>3</sup> must, provided that the notice of appeal was given or the notice of application was made within the prescribed time<sup>4</sup>, send to the appellant<sup>5</sup> or the applicant<sup>6</sup> an acknowledgement of its receipt<sup>7</sup>, enter particulars of it in the register<sup>8</sup>, and inform the appellant or the applicant in writing<sup>9</sup> of the case number of the appeal or application entered in the register<sup>10</sup>. Upon receiving a reply from a respondent<sup>11</sup> the Family Health Services Appeal Authority must send the respondent an acknowledgement of its receipt<sup>12</sup>, enter particulars of the reply in the register<sup>13</sup>, and inform the respondent of the case number of the appeal or application, as the case may be<sup>14</sup>.

The Family Health Services Appeal Authority must serve forthwith a copy of any document submitted by a party<sup>15</sup> in connection with an appeal or an application on the other party in the case; provided that if any document is sent or delivered to the authority after a prescribed time<sup>16</sup>, it may defer service pending a decision by a panel<sup>17</sup> for the extension of the time limit in question<sup>18</sup>. If any document supplied to the Family Health Services Appeal Authority by a party in an appeal or an application contains any matter that relates to a person's<sup>19</sup> intimate personal or financial circumstances<sup>20</sup>, is commercially sensitive<sup>21</sup>, consists of information communicated or obtained in confidence<sup>22</sup>, or considerations of national security are involved<sup>23</sup>, and for that reason the party seeks to restrict its disclosure, that party must inform the authority of that fact and of the reasons for seeking such a restriction<sup>24</sup>. In any such case the Family Health Services Appeal Authority must serve the copies only in accordance with directions given by the panel to which the case is allocated<sup>25</sup>.

1 As to notices of appeal see PARA 449.

2 As to notices of application see PARA 454.

3 As to the Family Health Services Appeal Authority see PARA 443.

4 The prescribed time is that described in the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 5 (see PARA 449) or r 15 (see PARA 453), or in the National Health Service Act 2006 or the National Health Service (Wales) Act 2006: see the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5 As to the meaning of 'appellant' see PARA 449 note 1.

6 As to the meaning of 'applicant' see PARA 454 note 1.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(1)(a). The acknowledgement must include a notice that advice in relation to the proceedings may be obtained from the Family Health Services Appeal Authority: r 29(1)(a).

8 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(1)(b). 'Register' means any register kept by the Family Health Services Appeal Authority in which details concerning appeals, applications, replies and decisions are kept: r 2(1). 'Reply' must be construed in accordance with r 12 (see PARA 451) or r 23 (see PARA 455), as the case may be: r 2(1). As to the meaning of 'decision' see PARA 449 note 8.

- 9 As to the meaning of 'writing' see PARA 7 note 2.
- 10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(1)(c). The case number thereafter constitutes the title of the proceedings: see r 29(1)(c).
- 11 In the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29, 'respondent' includes a respondent health authority or primary care trust: r 29(6) (amended by SI 2002/2469). As to the meaning of 'respondent' generally see PARA 454 note 3. As to the meaning of 'respondent health authority or primary care trust' see PARA 451 note 1.
- 12 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(2)(a).
- 13 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(2)(b).
- 14 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(2)(c).
- 15 As to the meaning of 'party' see PARA 449 note 4.
- 16 In the time prescribed in the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, other than in r 5 (see PARA 449) or r 15 (see PARA 453).
- 17 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.
- 18 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(3). This provision is expressed to be subject to r 29(4): see the text to notes 19-24.
- 19 As to the meaning of 'person' see PARA 17 note 2.
- 20 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(4)(a).
- 21 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(4)(b).
- 22 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(4)(c).
- 23 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(4)(d).
- 24 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(4).
- 25 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(5).

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#### **458. Allocation to a panel.**

The president<sup>1</sup> must allocate a case to a panel<sup>2</sup> after the Family Health Services Appeal Authority has received a reply<sup>3</sup> to an appeal<sup>4</sup> or to an application<sup>5</sup>, as the case may be<sup>6</sup>. Where a case has been so allocated to a panel, any proceedings in that case, including any application for directions<sup>7</sup> by a party<sup>8</sup> must be dealt with by that panel, except where in the president's opinion, including for reasons of urgency, the matter should be dealt with by another panel and the president must allocate that matter to another panel accordingly<sup>9</sup>. Where a party to an appeal or an application makes an application for directions before the case has been allocated to a panel, the president may allocate such an application to any panel<sup>10</sup>.

The president must ensure that in certain cases<sup>11</sup> the composition of any panel to which the case or any proceedings in such a case is allocated<sup>12</sup> is in accordance with the statutory requirements<sup>13</sup>.

1 'President' means the president of the Family Health Services Appeal Authority and includes any deputy president: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1). Any functions of the president under the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, may be carried out by any deputy president: r 3. As to the president and deputy presidents see PARA 444. As to the Family Health Services Appeal Authority see PARA 443. As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

2 As to panels generally see PARA 445.

3 As to the meaning of 'reply' see PARA 457 note 8.

4 Ie an appeal under the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, Pt II (rr 5-14): see PARAS 449-452.

5 Ie an application under the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, Pt III (rr 15-28): see PARAS 453-456.

6 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 31(1). This provision is expressed to be subject to r 31(2), (3): see the text to notes 7-10.

7 As to the meaning of 'directions' see PARA 450 note 4.

8 As to the meaning of 'party' see PARA 449 note 4.

9 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 31(3).

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 31(2).

11 Ie in the case of an FHS regulations appeal (Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 30(a)), or an application for an order under the National Health Service Act 2006 s 154(6) (b) or the National Health Service (Wales) Act 2006 s 110(6)(b) (see PARA 394) (Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 30(b)). As to the meaning of 'FHS regulations appeal' see PARA 449 note 2.

12 Ie under the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 31: see the text to notes 1-10.

13 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 30. The statutory requirements are those of the National Health Service Act 2006 Sch 13 para 10 (see PARA 445) as if the panel were one constituted for the purposes of the National Health Service Act 2006 s 158 or the National Health Service (Wales) Act 2006 s 114 (see PARA 401), or the National Health Service Act 2006 s 159 or the National

Health Service (Wales) Act 2006 s 115 (see PARA 402): see the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 30; National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

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#### **459. Directions.**

The panel<sup>1</sup> to which a case has been allocated may at any time, on the application for directions<sup>2</sup> of a party<sup>3</sup> or of its own motion, give such directions as are necessary to enable the parties to prepare for the hearing<sup>4</sup> or to assist the panel to which the case is allocated to determine the issues<sup>5</sup>. An application by a party for directions must be made in writing<sup>6</sup> to the Family Health Services Appeal Authority<sup>7</sup> and, unless it is accompanied by the written consent of the other party, must be served by the authority on the other party<sup>8</sup>. If the other party objects to the directions sought, the panel must, if it considers it necessary for the determination of the application, give the parties an opportunity of appearing before it<sup>9</sup>.

Directions must, where appropriate, include a statement of the possible consequences for the appeal or application<sup>10</sup> of a party's failure to comply with any requirement within the time allowed by the panel<sup>11</sup>. The panel may give directions requiring any party to provide such particulars or supplementary statements as may be reasonably required for the determination of the appeal or application<sup>12</sup>.

Where a person<sup>13</sup> to whom a direction is given had no opportunity to object to the making of such direction, he may apply to have it varied or set aside<sup>14</sup>. Where such an application is made it must be considered by the panel which gave the direction and it must not be varied or set aside without notifying the party which applied for the direction and considering any representations made by that party<sup>15</sup>.

If any directions given to a party are not complied with by such a party without reasonable excuse, the panel may, before or at the hearing: (1) dismiss the whole or any part of the appeal or application<sup>16</sup>; (2) strike out the whole or part of a respondent health authority's or primary care trust's<sup>17</sup>, or respondent's reply<sup>18</sup>; and (3) where appropriate, direct that a respondent health authority or primary care trust or, as the case may be, a respondent, be debarred from contesting an application altogether<sup>19</sup>. However, a panel must not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with that direction giving an opportunity to show cause why it should not do so<sup>20</sup>.

1 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

2 As to the meaning of 'directions' see PARA 450 note 4.

3 As to the meaning of 'party' see PARA 449 note 4.

4 As to the meaning of 'hearing' see PARA 449 note 8.

5 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 32(1). This provision is expressed to be subject to r 31(3) (see PARA 458) and r 32(2). In exercising the powers conferred by r 32 the panel must take into account the need to protect any matter referred to in r 29(4) (see PARA 457): r 32(2). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

6 As to the meaning of 'writing' see PARA 7 note 2.

7 As to the Family Health Services Appeal Authority see PARA 443.

8 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 32(3).

9 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 32(4).

10 le as provided by the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 36: see the text to notes 16-20.

11 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 32(5).

12 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 33.

13 As to the meaning of 'person' see PARA 17 note 2.

14 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 37(1).

15 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 37(2).

16 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 36(1)(a).

17 As to the meaning of 'respondent health authority or primary care trust' see PARA 451 note 1.

18 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 36(1)(b) (r 36(1)(b), (c) amended by SI 2002/2469). As to the meaning of 'respondent' see PARA 454 note 3. As to the meaning of 'reply' see PARA 457 note 8.

19 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 36(1)(c) (as amended: see note 18).

20 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 36(2).



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#### **460. Disclosure of documents and summoning of witnesses.**

The panel<sup>1</sup> may require a person<sup>2</sup> to deliver to the Family Health Services Appeal Authority<sup>3</sup> any document or class of documents which it is in the power of that person to deliver<sup>4</sup>. The Family Health Services Appeal Authority must<sup>5</sup> make such provision as it thinks necessary to supply copies of any document so obtained to the other party<sup>6</sup> to the proceedings, and it is a condition of such supply that a party must use such a document only for the purposes of the appeal or application<sup>7</sup>.

The panel may by summons require any person in England<sup>8</sup> to attend as a witness at a hearing<sup>9</sup> of an appeal or application at such time and place as may be specified in the summons and, at the hearing to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal or application<sup>10</sup>. No person may be required to attend in obedience to such a summons unless: (1) he has been given at least seven days' notice of the hearing or, if less than seven days, he has informed the Family Health Services Appeal Authority that he accepts such notice as he has been given<sup>11</sup>; and (2) his reasonable expenses have been tendered by the Family Health Services Appeal Authority<sup>12</sup>.

1 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to the Family Health Services Appeal Authority see PARA 443.

4 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 34(1). This provision is expressed to be subject to the National Health Service Act 2006 Sch 13 para 18 (see PARA 446): see the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 34(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5 Is subject to the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 29(4): see PARA 457.

6 As to the meaning of 'party' see PARA 449 note 4.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 34(2).

8 As to the meaning of 'England' see PARA 6 note 2.

9 As to the meaning of 'hearing' see PARA 449 note 8.

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 35(1). This provision is expressed to be subject to the National Health Service Act 2006 Sch 13 para 18 (see PARA 446): see the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 35(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

11 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 35(2)(a).

12 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 35(2)(b).

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## **(v) Determination of Appeals or Applications**

### **461. Powers to determine appeal or application without a hearing.**

The panel<sup>1</sup> may, if the parties<sup>2</sup> so agree in writing<sup>3</sup>, determine an appeal or application, or any particular issue, without an oral hearing<sup>4</sup>.

The panel may determine an appeal or application on the basis of the documents provided by the appellant<sup>5</sup> or by the applicant<sup>6</sup>, as the case may be, without an oral hearing where<sup>7</sup>: (1) no reply<sup>8</sup> is received by the Family Health Services Appeal Authority<sup>9</sup> within the time appointed<sup>10</sup>; or (2) the respondent health authority or primary care trust<sup>11</sup> or the respondent<sup>12</sup> states in writing that he does not resist, or withdraws his reply to the appeal or application<sup>13</sup>.

1 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

2 As to the meaning of 'party' see PARA 449 note 4.

3 As to the meaning of 'writing' see PARA 7 note 2.

4 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 38(1). The provisions of r 40(2) (see PARA 463) and of r 41(6) (see PARA 462) apply in respect of the determination of an appeal or application, or any particular issue, under r 38: r 38(3). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5 Ie under the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, rr 6 and 7: see PARA 449. As to the meaning of 'appellant' see PARA 449 note 1.

6 Ie under the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, rr 16-18: see PARA 454. As to the meaning of 'applicant' see PARA 454 note 1.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 38(2). See also note 4.

8 As to the meaning of 'reply' see PARA 457 note 8.

9 As to the Family Health Services Appeal Authority see PARA 443.

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 38(2)(a). The time appointed is that appointed under r 12 (see PARA 451) or r 23 (see PARA 455).

11 As to the meaning of 'respondent health authority or primary care trust' see PARA 451 note 1.

12 As to the meaning of 'respondent' see PARA 454 note 3.

13 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 38(2)(b).

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#### **462. Procedure at hearing.**

All hearings<sup>1</sup> by a panel<sup>2</sup> must be in public except where a practitioner<sup>3</sup> has asked for the hearing to be in private and the panel considers that it is reasonable in all the circumstances for that hearing to be held in private<sup>4</sup>. The following persons are entitled to attend the hearing of an appeal or an application, whether or not it is in private: (1) the president<sup>5</sup> or any member<sup>6</sup> of the Family Health Services Appeal Authority, notwithstanding that he is not a member of the panel for the purpose of the hearing<sup>7</sup>; (2) a member of the Administrative Justice and Tribunals Council<sup>8</sup>; but such persons may not take part in the proceedings or in the making of any decision by a panel<sup>9</sup>. A panel, with the consent of the parties<sup>10</sup>, may permit any other person to attend the hearing of an appeal or application which is held in private<sup>11</sup>.

At the beginning of the hearing the chairman<sup>12</sup> must explain to the parties the order of proceedings which the panel proposes to adopt<sup>13</sup>. The panel must conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings<sup>14</sup>. The parties must be heard in such order as the panel determines and they are entitled to give evidence, to call witnesses<sup>15</sup>, to question any witnesses and to address the panel both on the evidence and generally on the subject matter of the appeal or the application, as the case may be<sup>16</sup>. Where the hearing is in public the panel may direct that the identity of a witness (other than a party) may, if the interests of justice require it, not be disclosed to the public<sup>17</sup>; or where in the panel's opinion it is strictly necessary, that some part of the hearing be held in private<sup>18</sup>. Evidence before the panel may be given orally or, if the panel so directs, by written<sup>19</sup> statement, but the panel may at any stage of the proceedings require the personal attendance of any maker of a written statement<sup>20</sup>. The panel may receive evidence of any fact which appears to it to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but must not refuse to admit any evidence which is admissible at law and is relevant<sup>21</sup>. At any hearing the panel may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of appeal<sup>22</sup> or, as the case may be, notice of application<sup>23</sup>, or his reply<sup>24</sup> in either case and, in respect of an appellant<sup>25</sup>, to adduce any evidence not presented to the respondent health authority or primary care trust<sup>26</sup> before or at the time it took the disputed decision<sup>27</sup>.

1 As to the meaning of 'hearing' see PARA 449 note 8.

2 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

3 As to the meaning of 'practitioner' see PARA 445 note 9: definition applied by the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 39(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

4 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 39(1). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5 As to the meaning of 'president' see PARA 458 note 1.

6 'Member' means a member of the Family Health Services Appeal Authority other than the president or any deputy president: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1). As to the Family Health Services Appeal Authority see PARA 443. As to the membership of the Family Health Services Appeal Authority see PARA 444.

- 7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 39(2)(a).
- 8 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 39(2)(b). This provision refers to the Council on Tribunals, but it was abolished and replaced by the Administrative Justice and Tribunals Council as from 1 November 2007: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 55 et seq.
- 9 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 39(2).
- 10 As to the meaning of 'party' see PARA 449 note 4.
- 11 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 39(3).
- 12 'Chairman' means the chairman of a panel to which a case has, or to which particular proceedings in a case have, been allocated: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 2(1).
- 13 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 41(1).
- 14 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 41(2). This provision is expressed to be subject to r 41: see the text to notes 15-27. As to the standard of proof to be applied by a panel see *Doshi v Southend on Sea Primary Care Trust* [2007] EWHC 1361 (Admin), [2007] All ER (D) 48 (May).
- 15 The panel may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form: Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 41(8). As to oaths and affirmations see **CIVIL PROCEDURE** vol 11 (2009) PARA 1021 et seq.
- 16 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 41(3).
- 17 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 41(4)(a).
- 18 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 41(4)(b).
- 19 As to the meaning of 'written' see PARA 7 note 2.
- 20 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 41(5).
- 21 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 41(6). As to evidence in civil proceedings see **CIVIL PROCEDURE** vol 11 (2009) PARA 758 et seq. As to the admissibility of evidence in criminal proceedings see **CIVIL PROCEDURE** vol 11 (2009) PARA 758 et seq; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1359 et seq.
- 22 As to notices of appeal see PARA 449.
- 23 As to notices of application see PARA 454.
- 24 As to the meaning of 'reply' see PARA 457 note 8.
- 25 As to the meaning of 'appellant' see PARA 449 note 1.
- 26 As to the meaning of 'respondent health authority or primary care trust' see PARA 451 note 1.
- 27 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 41(7) (amended by SI 2002/2469).

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**463. Failure of parties to attend hearing.**

If a party<sup>1</sup> fails to attend or be represented at a hearing<sup>2</sup> of which he has been duly notified<sup>3</sup>, the panel<sup>4</sup> may: (1) unless it is satisfied that there is reasonable excuse for such absence, hear and determine the appeal or application, as the case may be in the party's absence<sup>5</sup>; or (2) adjourn the hearing<sup>6</sup>. Before determining any appeal or application in the absence of a party, the panel must consider any representations in writing<sup>7</sup> submitted by that party in response to the notice of hearing and, for these purposes, the appeal or application and any reply<sup>8</sup> must be treated as representations in writing<sup>9</sup>.

1 As to the meaning of 'party' see PARA 449 note 4.

2 As to the meaning of 'hearing' see PARA 449 note 8.

3 As to notices of hearing see PARAS 452, 456.

4 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

5 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 40(1)(a). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

6 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 40(1)(b).

7 As to the meaning of 'writing' see PARA 7 note 2.

8 As to the meaning of 'reply' see PARA 457 note 8.

9 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 40(2).

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#### **464. Miscellaneous powers of panel.**

A panel<sup>1</sup> may, if it thinks fit: (1) dismiss the proceedings if the appellant<sup>2</sup> or the applicant<sup>3</sup>, as the case may be, at any time give notice of the withdrawal of the appeal or the application<sup>4</sup>; (2) if both the parties<sup>5</sup> agree in writing<sup>6</sup> upon the terms of a decision to be made by the panel, decide accordingly (and in making any such decision, it is not necessary for the panel to give reasons)<sup>7</sup>.

At any stage of the proceedings a panel may direct that: (a) there be struck out or amended any notice<sup>8</sup>, reply<sup>9</sup>, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious<sup>10</sup>; or (b) there be struck out any appeal or any application for want of prosecution<sup>11</sup>. However, before making any such direction the panel must give notice to the party against whom it is proposed that any such direction should be made giving him an opportunity to show cause why it should not be made<sup>12</sup>.

1 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

2 As to the meaning of 'appellant' see PARA 449 note 1.

3 As to the meaning of 'applicant' see PARA 454 note 1.

4 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 44(1)(a). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5 As to the meaning of 'party' see PARA 449 note 4.

6 As to the meaning of 'writing' see PARA 7 note 2.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 44(1)(b).

8 As to notices of appeal see PARA 449. As to notices of application see PARA 454.

9 As to the meaning of 'reply' see PARA 457 note 8.

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 44(2)(a).

11 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 44(2)(b).

12 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 44(3).

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#### **465. Irregularities.**

Any irregularity resulting from failure to comply with any provisions of the statutory rules<sup>1</sup> or of any directions<sup>2</sup> before the panel<sup>3</sup> has reached its decision does not of itself render the proceedings void<sup>4</sup>. Where any such irregularity comes to the attention of the panel, the panel may, and must if it considers that any person<sup>5</sup> may have been prejudiced by the irregularity, give such directions<sup>6</sup> as it thinks fit to cure or waive the irregularity before reaching its decision<sup>7</sup>.

1    le the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750.

2    As to the power of the Secretary of State to give directions to the Family Health Services Appeal Authority see the National Health Service Act 2006 s 169(3); and PARA 443.

3    As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

4    Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 45(1). As to decisions of panels see PARA 466. As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5    As to the meaning of 'person' see PARA 17 note 2.

6    As to the meaning of 'directions' see PARA 450 note 4.

7    Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 45(2).

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#### **466. Decision of panel.**

The decision of the panel<sup>1</sup> may be given orally at the end of the hearing<sup>2</sup> or reserved<sup>3</sup>. All decisions of a panel must be recorded forthwith in a document which records the relevant party's<sup>4</sup> professional registration number<sup>5</sup>, where applicable, and save in the case of a decision by consent<sup>6</sup>, must also contain a statement of the reasons (in summary form) for its decision, and that document must be signed and dated by the chairman<sup>7</sup>. Every such document must be entered in the register<sup>8</sup> and the Family Health Services Appeal Authority<sup>9</sup> must send a copy of the entry to each party<sup>10</sup>. Every copy of an entry so sent to the parties must be accompanied by a notification of their rights<sup>11</sup> relating to appeals from decisions of the Family Health Services Appeal Authority and of the time within which and place at which such appeal must be made<sup>12</sup>.

Except where a decision is announced at the end of the hearing, it is treated as having been made on the date on which a copy of the document recording it is sent to the appellant<sup>13</sup>, or the applicant<sup>14</sup> health authority or primary care trust, as the case may be<sup>15</sup>.

1 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

2 As to the meaning of 'hearing' see PARA 449 note 8.

3 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 42(1). As to reviews of panel decisions see PARA 467. As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

4 As to the meaning of 'party' see PARA 449 note 4.

5 As to the meaning of 'professional registration number' see PARA 449 note 4.

6 As to the power of a panel to make decisions by consent see PARA 464.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 42(2). As to the meaning of 'chairman' see PARA 462 note 12.

8 As to the meaning of 'register' see PARA 457 note 8.

9 As to the Family Health Services Appeal Authority see PARA 443.

10 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 42(3). Where any such document refers to any evidence that has been heard in private or when a witness has given evidence in circumstances of anonymity as provided for under r 41(4) (see PARA 462), it must be entered in the register as the panel may direct, but copies of the complete document must be sent to the parties together with a copy of the entry: r 42(4). As to the meaning of 'party' see PARA 449 note 4.

11 Ie under the Tribunals and Inquiries Act 1992 s 11.

12 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 42(5).

13 As to the meaning of 'appellant' see PARA 449 note 1.

14 As to the meaning of 'applicant' see PARA 454 note 1.

15 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 42(6) (amended by SI 2002/2469).



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#### **467. Review of panel's decision.**

If, on the application of a party<sup>1</sup> or of its own motion, a panel<sup>2</sup> is satisfied that: (1) its decision<sup>3</sup> was wrongly made as a result of an error made by the panel<sup>4</sup>; (2) a party, who was entitled to be heard at a hearing<sup>5</sup> but failed to appear or be represented<sup>6</sup>, had good and sufficient reason for failing to appear<sup>7</sup>; (3) new evidence has become available since the conclusion of the hearing to which the decision relates the existence of which could not have been reasonably known of or foreseen<sup>8</sup>; or (4) the interests of justice require<sup>9</sup>, the panel may review and, by certificate under the chairman's<sup>10</sup> hand, set aside or vary the decision of the panel in question<sup>11</sup>.

The parties must have an opportunity to be heard on any application for review and the review must<sup>12</sup> be determined by the panel which decided the case<sup>13</sup>. If, having reviewed the decision, the decision is set aside, the panel must substitute such decision as it thinks fit or order a rehearing before it<sup>14</sup>. Where a decision is reviewed the Family Health Services Appeal Authority must serve a copy of that revised decision on the parties as soon as practicable thereafter<sup>15</sup>.

1 An application by a party must be made to the Family Health Services Appeal Authority not later than 14 days after the date on which the decision was sent to the parties in accordance with the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 42 (see PARA 466) and must be in writing, stating the grounds in full: r 43(2). As to the meaning of 'party' see PARA 449 note 4. As to the Family Health Services Appeal Authority see PARA 443. As to the meaning of 'decision' see PARA 449 note 8. As to the meaning of 'writing' see PARA 7 note 2.

2 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458.

3 As to decisions of panels see PARA 466.

4 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 43(1)(a). As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5 As to the meaning of 'hearing' see PARA 449 note 8.

6 As to the failure of parties to attend a hearing see PARA 463. As to parties' right to representation see PARAS 452, 456.

7 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 43(1)(b).

8 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 43(1)(c). As to evidence see PARA 462.

9 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 43(1)(d).

10 As to the meaning of 'chairman' see PARA 462 note 12.

11 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 43(1). The certificate of the chairman as to the setting aside or variation of a panel's decision must be sent to the president who must ensure that such correction as may be necessary is made in the register and that a copy of the entry so corrected is sent to each of the parties: r 43(6). As to the meaning of 'president' see PARA 458 note 1. As to the meaning of 'register' see PARA 457 note 8.

12 Ie subject to the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 45: see PARA 465.

13 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 43(3). Where for any reason it is not practicable for the review to be carried out by the same panel, the president must allocate the matter to another panel: r 43(4).

14 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 43(5).

15 Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 43(7). Where a copy of the original decision has already been sent to any person or body referred to in r 47 (see PARA 468), the president must ensure that the person or body in question is notified immediately of the revised decision: r 43(8).

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#### **468. Notice and publication of decisions.**

The Family Health Services Appeal Authority<sup>1</sup> must give notice of a panel's decision<sup>2</sup> and of the reasons for it to each party to the proceedings<sup>3</sup>, and publish each of certain decisions of a panel<sup>4</sup> in such way as the authority considers appropriate<sup>5</sup>; and it may send a copy of any such decision to such prescribed persons or persons of prescribed descriptions as it considers appropriate, together with any information relevant to the decision which the authority considers it appropriate to include<sup>6</sup>. The Family Health Services Appeal Authority may publish any other decision of a panel<sup>7</sup>.

1 As to the Family Health Services Appeal Authority see PARA 443.

2 As to panels generally see PARA 445. As to the allocation of cases to panels see PARA 458. As to panel decisions see PARA 466. As to the review of such decisions see PARA 467.

3 National Health Service Act 2006 Sch 13 para 12(a).

4 The decisions are: (1) a decision on national disqualification (see the National Health Service Act 2006 s 159: PARA 402) (Sch 13 para 13(a)); (2) a decision to allow an appeal brought by virtue of s 158(2)(a), (b) or (c) (see PARA 401) (Sch 13 para 13(b)); and (3) such other decisions as may be prescribed (Sch 13 para 13(c)). 'Prescribed' means prescribed by regulations: s 275(1). For these purposes the Family Health Services Appeal Authority must publish any decision by a panel: (a) which upholds on appeal a health authority's or primary care trust's decision under an FHS regulation not to include a person in a list, or to include that person subject to conditions (Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 46(a) (amended by SI 2002/2469)); or (b) not to allow an appeal brought by virtue of the National Health Service Act 2006 s 158(2)(a), (b) or (c) or the National Health Service (Wales) Act 2006 s 114(2)(a), (b), or (c) (see PARA 401), or under regulations making provision corresponding to the National Health Service Act 2006 s 158 pursuant to s 91(3) (see PARA 248) or s 106(3) (see PARA 283), or under regulations making provision corresponding to the National Health Service (Wales) Act 2006 s 114 under s 49(3) (see PARA 248) or s 63(3) (see PARA 283) (Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 46(b) (amended by SI 2004/865; SI 2004/1016); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4)). As to the meaning of 'decision' see PARA 449 note 8. As to the meaning of 'FHS regulations' see PARA 449 note 1. As to the meaning of 'person' see PARA 17 note 2. As to the application of the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, see PARA 449 note 1.

5 National Health Service Act 2006 Sch 13 para 12(b).

6 National Health Service Act 2006 Sch 13 para 12. The Family Health Services Appeal Authority may send a copy of any decision within either Sch 13 para 13(a) or (b) or the Family Health Services Appeal Authority (Procedure) Rules 2001, SI 2001/3750, r 46 (see note 4), to any of the following persons or bodies: the Secretary of State; the Welsh Ministers; the Scottish Executive; the Northern Ireland Executive Committee; the registrar of the appropriate professional registration body: r 47(1); Government of Wales Act 2006 Sch 11 para 32. The Family Health Services Appeal Authority may send a copy of such a decision to any other person or body which, in its opinion, should be made aware of that decision: r 47(2). As to the Secretary of State see PARA 6 note 8. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the Scottish Executive and the Northern Ireland Executive Committee see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the meaning of 'appropriate professional registration body' see PARA 449 note 4.

7 See the National Health Service Act 2006 Sch 13 para 14.

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## **(7) CHARGING**

### **(i) Charges for Services**

#### **A. POWERS TO CHARGE**

##### **469. Charges for drugs, medicines or appliances, and pharmaceutical services.**

Regulations<sup>1</sup> may provide for the making and recovery in such manner as may be prescribed<sup>2</sup> of such charges as may be prescribed in respect of: (1) the supply under the National Health Service Act 2006<sup>3</sup> of drugs, medicines<sup>4</sup> or appliances (including the replacement and repair of those appliances)<sup>5</sup>; and (2) such pharmaceutical services<sup>6</sup> as may be prescribed<sup>7</sup>. The regulations may in particular make provision in relation to the supply<sup>8</sup> of contraceptive substances and appliances<sup>9</sup>. The regulations may not make provision in relation to the provision of any relevant dental service<sup>10</sup>.

No charge may be made under such regulations in respect of: (a) the supply of any drug, medicine or appliance for a patient<sup>11</sup> who is resident in hospital<sup>12</sup>; (b) the supply of any drug or medicine for the treatment of sexually transmitted disease (otherwise than in the provision of primary medical services<sup>13</sup> or in accordance with a pilot scheme<sup>14</sup> or an LPS scheme<sup>15</sup>); (c) the supply of any appliance (other than contraceptive appliances<sup>16</sup>) for a person who is under 16 years of age<sup>17</sup> or is under 19 years of age and receiving qualifying full-time education<sup>18</sup>; or (d) the replacement or repair of any appliance in consequence of a defect in the appliance as supplied<sup>19</sup>.

The regulations may provide for the grant, on payment of such sums as may be prescribed<sup>20</sup>, of a pre-payment certificate<sup>21</sup>. A 'pre-payment certificate' is a certificate which confers on the person to whom it is granted exemption from charges otherwise chargeable under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed<sup>22</sup>.

Where the regulations provide for the making and recovery of charges in respect of any services<sup>23</sup> they may provide for the sums which would otherwise be payable by a primary care trust<sup>24</sup> or special health authority<sup>25</sup> to the persons by whom the services are provided, to be reduced by the amount of the charges authorised by the regulations in respect of the services<sup>26</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

3 Ie otherwise than under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133): see PARA 339 et seq.

4 As to the meaning of 'medicine' see PARA 339 note 4.

5 National Health Service Act 2006 s 172(1)(a). As to the equivalent provision to the National Health Service Act 2006 ss 172-174 in relation to Wales see the National Health Service (Wales) Act 2006 ss 121-123. As to the meaning of 'Wales' see PARA 6 note 2. As to the remission and repayment of charges see PARA 475.

6 Ie pharmaceutical services referred to in the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133): see PARA 339 et seq. As to the meaning of 'pharmaceutical services' see PARA 339.

7 National Health Service Act 2006 s 172(1)(b). As to the regulations which have been made see the National Health Service (Charges for Drugs and Appliances) Regulations 2000, SI 2000/620, which have effect under the National Health Service Act 2006 ss 172, 173 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (Charges for Drugs and Appliances) Regulations 2000, SI 2000/620, extend to England only: reg 1(2). As to the meaning of 'England'

see PARA 6 note 2. As to the equivalent regulations in relation to Wales see the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Wales) Regulations 2007, SI 2007/121.

8 le under the National Health Service Act 2006 Sch 1 para 8: see PARA 34.

9 National Health Service Act 2006 s 172(2).

10 See the National Health Service Act 2006 s 172(3). As to the meaning of 'relevant dental service' see PARA 471 note 3. As to charging for dental services see PARA 471.

11 As to the meaning of 'patient' see PARA 15 note 6.

12 National Health Service Act 2006 s 173(1)(a). As to the meaning of 'hospital' see PARA 12 note 4.

13 As to primary medical services see PARA 241.

14 As to the meaning of 'pilot scheme' see PARA 419.

15 National Health Service Act 2006 s 173(1)(b). As to the meaning of 'LPS scheme' see PARA 431.

16 le supplied in pursuance of the National Health Service Act 2006 Sch 1 para 8(d): see PARA 34.

17 As to the time at which a person attains a particular age see PARA 36 note 7.

18 National Health Service Act 2006 s 173(1)(c). 'Qualifying full-time education' means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State: s 173(2). 'Recognised educational establishment' means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university (s 173(3)(a)); and regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction (s 173(3)(b)). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the meaning of 'university' see PARA 22 note 4.

19 National Health Service Act 2006 s 173(1)(d).

20 Different sums may be prescribed in relation to different periods: National Health Service Act 2006 s 174(3).

21 National Health Service Act 2006 s 174(1).

22 National Health Service Act 2006 s 174(2).

23 See the National Health Service Act 2006 s 188(1)(a). As to the equivalent provision to the National Health Service Act 2006 s 188 in relation to Wales see the National Health Service (Wales) Act 2006 s 136.

24 As to primary care trusts see PARA 111.

25 As to special health authorities see PARA 136.

26 National Health Service Act 2006 s 188(2). As to the meaning of 'person' see PARA 17 note 12.

## UPDATE

### **469 Charges for drugs, medicines or appliances, and pharmaceutical services**

NOTE 7--SI 2000/620 amended: SI 2008/1697, SI 2008/1700, SI 2008/2593, SI 2009/29, SI 2009/411, SI 2009/1166, SI 2009/2230. SI 2007/121 amended: SI 2009/1175, SI 2009/2607.

NOTE 15--National Health Service Act 2006 s 173(1)(b) amended: Health Service Act 2009 Sch 1 para 7.

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#### **470. Charges in respect of non-residents.**

Regulations<sup>1</sup> may provide for the making and recovery, in such manner as may be prescribed<sup>2</sup>, of such charges as the Secretary of State may determine<sup>3</sup> in respect of such services<sup>4</sup> as may be prescribed, being services which are provided under the National Health Service Act 2006<sup>5</sup> and provided in respect of such persons not ordinarily resident in Great Britain<sup>6</sup> as may be prescribed<sup>7</sup>. The regulations may provide that the charges may be made only in such cases as may be determined in accordance with the regulations<sup>8</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

3 The Secretary of State may calculate charges on any basis that he considers to be the appropriate commercial basis: National Health Service Act 2006 s 175(4). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89.

4 National Health Service Act 2006 s 175(1). As to the equivalent provision to the National Health Service Act 2006 s 175 in relation to Wales see the National Health Service (Wales) Act 2006 s 124. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 s 175(2)(a).

6 As to the meaning of 'Great Britain' see PARA 15 note 8. A failed asylum seeker may be ordinarily resident in Great Britain and therefore entitled to treatment free of charge: see *R (on the application of A) v West Middlesex University Hospital NHS Trust* [2008] EWHC 855 (Admin), [2008] All ER (D) 335 (Apr). As to the provision of services free of charge see the National Health Service Act 2006 s 1; and PARA 10.

7 National Health Service Act 2006 s 175(2)(b). As to the regulations which have been made see the National Health Service (Charges to Overseas Visitors) Regulations 1989, SI 1989/306 (amended by SI 1991/438; SI 1994/1535; SI 2000/602; SI 2004/614; SI 2004/696; SI 2004/1433; SI 2005/2114; SI 2005/3302; SI 2006/3306) which have effect under the National Health Service Act 2006 s 175 and the National Health Service (Wales) Act 2006 s 124 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). A health service trust may require payment in advance or an acceptable guarantee of payment from overseas visitors who seem unlikely to be able to pay for its services: *R v Hammersmith Hospitals NHS Trust, ex p Reffell* (2000) 55 BMLR 130, [2000] All ER (D) 890, DC. Services are made available to overseas visitors as a commercial operation, not as a humanitarian gesture and, except in those cases which are exempt under the regulations, however acute the condition or deserving the patient, there is no discretion to waive the obligation to pay: *R v Hammersmith Hospitals NHS Trust, ex p Reffell* (2000) 55 BMLR 130 at 135 per Kennedy LJ.

8 National Health Service Act 2006 s 175(2).

#### **UPDATE**

#### **470 Charges in respect of non-residents**

NOTE 6--Public policy considerations militate against failed asylum seekers being allowed to claim benefits of free national health service: *R (on the application of YA) v Secretary of State for Health* [2009] EWCA Civ 225, [2010] 1 All ER 87 (asylum-seeker granted temporary admission to the United Kingdom not entitled to benefits of free national health service).

NOTE 7--SI 1989/306 further amended by SI 2008/2251, SI 2009/1166 and, in relation to Wales, by SI 2008/2364, SI 2009/1175, SI 2009/1824, SI 2009/1512, SI 2009/3005, SI 2010/927.

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#### **471. Charging for dental services.**

Regulations<sup>1</sup> may provide for the making and recovery, in such manner as may be prescribed<sup>2</sup>, of charges for relevant dental services<sup>3</sup>. The regulations may in particular include provision: (1) specifying the amount, or maximum amount, of any charge (or aggregate charge in respect of the provision for two or more relevant dental services)<sup>4</sup>; (2) for calculating the amount of any charge<sup>5</sup>; (3) for the variation of the amount, or maximum amount, of any charge in cases of a prescribed description<sup>6</sup>; (4) for any charge not to be payable in cases of a prescribed description<sup>7</sup>; (5) for power to direct that a charge is not payable in any particular case<sup>8</sup>; (6) for the repayment of any charge (including provision as to the persons<sup>9</sup> by whom, and manner in which, repayments must be made)<sup>10</sup>. The regulations may provide for sums which would otherwise be payable by a primary care trust<sup>11</sup> or special health authority<sup>12</sup> to persons providing relevant dental services to be reduced by the amount of the charges authorised by the regulations<sup>13</sup>.

No charge may be made under such regulations in respect of<sup>14</sup>: (a) a relevant dental service provided for any person who at the prescribed time was under 18<sup>15</sup>, was under 19 and receiving qualifying full-time education<sup>16</sup>, was pregnant<sup>17</sup>, or had given birth to a child<sup>18</sup> within the previous 12 months<sup>19</sup>; (b) the repair or replacement of any appliance<sup>20</sup>, any appliance supplied to a patient<sup>21</sup> who is resident in a hospital<sup>22</sup>, or the arrest of bleeding<sup>23</sup>. Regulations may provide, with respect to any exemption under heads (a) or (b) above, that it must be a condition of the exemption that a declaration of the prescribed kind is made in the prescribed form and manner<sup>24</sup>, and a certificate or other evidence of the prescribed kind is supplied in the prescribed form and manner<sup>25</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 'Prescribed' means prescribed by regulations: s 275(1).

3 National Health Service Act 2006 s 176(1). 'Relevant dental services' means: (1) dental treatment provided under s 99(2) (see PARA 277) (s 176(4)(a)(i)), under a general dental services contract (s 176(4)(a)(ii)), or in accordance with arrangements under s 107 (see PARA 288) (s 176(4)(a)(iii)); and (2) the supply of dentures and other dental appliances under the National Health Service Act 2006 (s 176(4)(b)). Any reference in s 176 or s 177 (see the text to notes 14-25) to the supply of an appliance includes a reference to its repair, adjustment, refitting or replacement and, in the case of dentures, to their being relined or having additions made to them: s 176(5). As to the meaning of 'general dental services contract' see PARA 278. As to the equivalent provision to the National Health Service Act 2006 ss 176, 177 in relation to Wales see the National Health Service (Wales) Act 2006 ss 125, 126. As to the regulations which have been made see the National Health Service (Dental Charges) Regulations 2005, SI 2005/3477 (amended by SI 2006/1837; SI 2007/544; SI 2008/547) which have effect under the National Health Service Act 2006 ss 176, 177, by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (Dental Charges) Regulations 2005, SI 2005/3477, apply in relation to England only: see reg 1(2). As to the equivalent regulations in relation to Wales see the National Health Service (Dental Charges) (Wales) Regulations 2006, SI 2006/491. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 s 176(2)(a). As to the remission and repayment of charges see PARA 475.

5 National Health Service Act 2006 s 176(2)(b).

6 National Health Service Act 2006 s 176(2)(c).

7 National Health Service Act 2006 s 176(2)(d).

8 National Health Service Act 2006 s 176(2)(e).



- 9 As to the meaning of 'person' see PARA 17 note 2.
- 10 National Health Service Act 2006 s 176(2)(f).
- 11 As to primary care trusts see PARA 111.
- 12 As to special health authorities see PARA 136.
- 13 National Health Service Act 2006 s 176(3).
- 14 The provisions of the National Health Service Act 2006 s 177(1) and (2)(a) (see the text to note 20) do not apply in relation to: (1) the repair or replacement of any appliance of a prescribed description (s 177(3)(a)); (2) the repair or replacement of any appliance where it is determined in the prescribed manner (a) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied (s 177(3)(b)(i)); or (b) in a case where the person supplied was under the age of 16, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him (s 177(3)(b)(ii)). As to the time at which a person attains a particular age see PARA 36 note 7.
- 15 National Health Service Act 2006 s 177(1)(a).
- 16 National Health Service Act 2006 s 177(1)(b). 'Qualifying full-time education' means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State: s 177(6). 'Recognised educational establishment' means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university (s 177(7)(a)), and regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction (s 177(7)(b)). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the meaning of 'university' see PARA 22 note 4. As to the regulations made see note 3.
- 17 National Health Service Act 2006 s 177(1)(c).
- 18 'Child' includes a still-born child within the meaning of the Births and Deaths Registration Act 1953 (see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 504): National Health Service Act 2006 s 177(8).
- 19 National Health Service Act 2006 s 177(1)(d). As to the meaning of 'month' see PARA 28 note 16.
- 20 National Health Service Act 2006 s 177(2)(a). See also note 14.
- 21 As to the meaning of 'patient' see PARA 15 note 6.
- 22 National Health Service Act 2006 s 177(2)(b). Section 177(2)(b) does not apply where an appliance is supplied under s 99(2) (see PARA 277) (s 177(4)(a)), under a general dental services contract (s 177(4)(b)), or in accordance with arrangements under s 107 (see PARA 288) (s 177(4)(c)). As to the meaning of 'hospital' see PARA 12 note 4.
- 23 National Health Service Act 2006 s 177(2)(c).
- 24 National Health Service Act 2006 s 177(5)(a).
- 25 National Health Service Act 2006 s 177(5)(b). As to the regulations made see note 3.

## UPDATE

### 471 Charging for dental services

NOTE 3--SI 2005/3477 further amended: SI 2009/407. SI 2006/491 amended: SI 2009/456.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/A. POWERS TO CHARGE/472. Charging for local pharmaceutical services.

#### **472. Charging for local pharmaceutical services.**

Regulations<sup>1</sup> may provide for the making and recovery, in such manner as may be prescribed<sup>2</sup>, of charges for local pharmaceutical services<sup>3</sup> provided under pilot schemes<sup>4</sup>, or local pharmaceutical services provided under LPS schemes<sup>5</sup>. The regulations may in particular provide for: (1) exemptions from charges<sup>6</sup>; (2) the liability to pay charges to be disregarded in prescribed circumstances or for prescribed purposes<sup>7</sup>; (3) the provisions relating to the recovery of certain charges and payments<sup>8</sup> to apply also in relation to local pharmaceutical services (with or without modification)<sup>9</sup>; (4) the provisions relating to penalties<sup>10</sup> to apply also in relation to local pharmaceutical services (with or without modification)<sup>11</sup>. The regulations must secure that the amount charged for any service is the same as the amount that would be charged for that service if it were provided<sup>12</sup> under arrangements for the provision of pharmaceutical services<sup>13</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

3 As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.

4 National Health Service Act 2006 s 178(1)(a). As to the meaning of 'pilot scheme' see PARA 419.

5 National Health Service Act 2006 s 178(1)(b). As to the meaning of 'LPS scheme' see PARA 431. As to the equivalent provision to the National Health Service Act 2006 s 178 in relation to Wales see the National Health Service (Wales) Act 2006 s 127. As to the regulations made see the National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552 (see PARA 440) which have effect under the National Health Service Act 2006 s 178 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (Local Pharmaceutical Services etc) Regulations 2006, SI 2006/552, apply in relation to England only: reg 1(2). At the date at which this volume states the law no equivalent regulations had been made in relation to Wales. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 National Health Service Act 2006 s 178(2)(a).

7 National Health Service Act 2006 s 178(2)(b).

8 Ie the National Health Service Act 2006 s 192: see PARA 483.

9 National Health Service Act 2006 s 178(2)(c). As to the meaning of 'modifications' see PARA 45 note 14.

10 Ie the National Health Service Act 2006 s 193: see PARA 484.

11 National Health Service Act 2006 s 178(2)(d).

12 Ie under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133): see PARA 339 et seq.

13 National Health Service Act 2006 s 178(3).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/A. POWERS TO CHARGE/473. Charges for optical appliances.

#### **473. Charges for optical appliances.**

Regulations<sup>1</sup> may provide for the making and recovery, in such manner as may be prescribed<sup>2</sup>, of charges in respect of the supply<sup>3</sup> under the National Health Service Act 2006 of optical appliances<sup>4</sup>. The amount of the charges may be determined in regulations<sup>5</sup>, or by or in accordance with directions<sup>6</sup> given by the Secretary of State<sup>7</sup>. Regulations or directions may vary the amount or maximum amount of charges<sup>8</sup>, or provide that the charges are not payable<sup>9</sup>. Where the regulations provide for the making and recovery of charges in respect of any services<sup>10</sup> they may provide for the sums which would otherwise be payable by a primary care trust<sup>11</sup> or special health authority<sup>12</sup> to the persons<sup>13</sup> by whom the services are provided, to be reduced by the amount of the charges authorised by the regulations in respect of the services<sup>14</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

3 A reference to supply includes a reference to replacement: National Health Service Act 2006 s 179(4).

4 National Health Service Act 2006 s 179(1). 'Optical appliances' means glasses and contact lenses, but regulations may provide for a different definition of optical appliances to have effect for the purposes of the National Health Service Act 2006: s 179(5). As to payments in respect of the costs of optical appliances see PARA 474. As to the equivalent provision to the National Health Service Act 2006 s 179 in relation to Wales see the National Health Service (Wales) Act 2006 s 128. As to the meaning of 'Wales' see PARA 6 note 2. As to the regulations which have been made see the National Health Service (Optical Charges and Payments) Regulations 1997, SI 1997/818 (amended by SI 2008/3289) which have effect under the National Health Service Act 2006 s 179, and the National Health Service (Wales) Act 2006 s 128, by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2).

5 National Health Service Act 2006 s 179(2)(a).

6 Such directions must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

7 National Health Service Act 2006 s 179(2)(b). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the remission and repayment of charges see PARA 475.

8 National Health Service Act 2006 s 179(3)(a).

9 National Health Service Act 2006 s 179(3)(b).

10 See the National Health Service Act 2006 s 188(1)(b). As to the equivalent provision to the National Health Service Act 2006 s 188 in relation to Wales see the National Health Service (Wales) Act 2006 s 136.

11 As to primary care trusts see PARA 111.

12 As to special health authorities see PARA 136.

13 As to the meaning of 'person' see PARA 17 note 2.

14 National Health Service Act 2006 s 188(2).

#### **UPDATE**

### **473 Charges for optical appliances**

NOTE 4--Reference to SI 2008/3289 should be to SI 2007/3289. SI 1997/818 further amended in relation to England (SI 2008/553, SI 2008/1657, SI 2008/2449, SI 2009/409, SI 2010/634) and Wales (SI 2008/660, SI 2008/2552, SI 2009/311, SI 2009/589, SI 2009/1824, SI 2010/636).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/A. POWERS TO CHARGE/474. Payments in respect of costs of optical appliances.

#### **474. Payments in respect of costs of optical appliances.**

The Secretary of State<sup>1</sup> must provide by regulations<sup>2</sup> for payments to be made by him or a relevant body<sup>3</sup> to meet, or to contribute towards, the cost incurred (whether by way of charge under the National Health Service Act 2006 or otherwise) for the supply of optical appliances<sup>4</sup> for which: (1) a prescription has been given for a specified person<sup>5</sup> in consequence of a sight test under the Act<sup>6</sup>; or (2) a prescription has been given for such a person in consequence of a sight test otherwise than under the Act which took place in prescribed circumstances<sup>7</sup>. The specified persons are: (a) a child<sup>8</sup>; (b) a person whose resources fall to be treated under the regulations as being less than or equal to his requirements<sup>9</sup>; (c) any person<sup>10</sup> aged 60 or over<sup>11</sup>; or (d) a person of such other description as may be prescribed<sup>12</sup>.

The Secretary of State may by regulations: (i) provide for himself or such relevant body as may be prescribed to contribute to the cost of a sight test which he or the prescribed body accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations<sup>13</sup>; and (ii) provide for payments to be made by him or by such relevant body as may be prescribed to meet, or to contribute towards, any cost accepted by him or by the prescribed body as having been incurred (whether by way of charge under the National Health Service Act 2006 or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a sight test of a person of a prescribed description<sup>14</sup>.

If the regulations provide for payments to be made by a relevant body, the Secretary of State must pay to the body, in respect of each financial year<sup>15</sup>, the sum attributable to the body's disbursements under the regulations<sup>16</sup>. Sums falling to be paid in pursuance of the regulations are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine<sup>17</sup>.

Regulations<sup>18</sup> providing for payments for meeting or contributing towards the cost incurred for the supply of optical appliances or their replacement or repair may also make provision<sup>19</sup>: (A) for such payments not to be made to any person falling within a prescribed description<sup>20</sup>; (B) for the Secretary of State to give notice to a person to whom such payments have been made (whether by the Secretary of State or by a relevant body)<sup>21</sup> that no further such payments in respect of the supply, replacement or repair of optical appliances at a particular location or in a particular area, in either case specified in the notice, will be made to him after a date specified in the notice<sup>22</sup>; (C) conferring on the Secretary of State the right, if he has given a notice by virtue of head (B) above, to apply to the Family Health Services Appeal Authority for a stop order<sup>23</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of regulations see PARA 9.

3 'Relevant body' means a strategic health authority, a primary care trust or a special health authority: National Health Service Act 2006 s 180(12). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111. As to special health authorities see PARA 136.

4 As to the meaning of 'optical appliances' see PARA 473 note 4.

5 As to the meaning of 'person' see PARA 17 note 2.

6 National Health Service Act 2006 s 180(1)(a). As to sight tests see PARAS 324-326, 328. As to the equivalent provision to the National Health Service Act 2006 ss 180, 181 in relation to Wales see the National Health Service (Wales) Act 2006 s 129. As to the meaning of 'Wales' see PARA 6 note 2. As to the regulations which have been made see the National Health Service (Optical Charges and Payments) Regulations 1997, SI 1997/818 (amended by SI 2008/3289) which have effect under the National Health Service Act 2006 s 180, and the National Health Service (Wales) Act 2006 s 129, by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2).

7 National Health Service Act 2006 s 180(1)(b). 'Prescribed' means prescribed by regulations: s 275(1).

8 National Health Service Act 2006 s 180(2)(a). 'Child' means a person who is under the age of 16 years (s 180(7)(a)), or a person who is under the age of 19 years and receiving qualifying full-time education (s 180(7)(b)). As to the time at which a person attains a particular age see PARA 36 note 7. 'Qualifying full-time education' means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State: s 180(8). 'Recognised educational establishment' means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university (s 180(9)(a)), and regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction (s 180(9)(b)). As to the meaning of 'university' see PARA 22 note 4.

9 National Health Service Act 2006 s 180(2)(b). Until the coming into force of the Health Act 2006 s 42(2), the National Health Service Act 2006 s 180(2)(b) has effect with the omission of the words 'or equal to': National Health Service (Consequential Provisions) Act 2006 s 5, Sch 3 Pt 2 para 8(1), (2)(a)(i). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 s 42(2) is repealed but such repeal does not take effect until s 42(2) is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(m), (5), (6). The Health Act 2006 s 42(2) comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed.

The regulations may direct how a person's resources and requirements must be calculated and may, in particular, direct that they must be calculated: (1) by a method set out in the regulations (National Health Service Act 2006 s 180(4)(a)); (2) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than s 180 or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications (s 180(4)(b)); (3) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament (s 180(4)(c)); or (4) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament (s 180(4)(d)). Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must be construed as a reference to that Act or instrument: (a) as it has effect at the time when the regulations are made (s 180(6)(a)); or (b) both as it has effect at that time and as amended subsequently (s 180(6)(b)). As to the meaning of 'enactment' see PARA 10 note 7. As to the meaning of 'modifications' see PARA 45 note 14.

10 Is any person falling within the National Health Service Act 2006 s 115(2)(d): see PARA 328.

11 National Health Service Act 2006 s 180(2)(c) (not yet in force). Until the coming into force of the Health Act 2006 s 42(2), the National Health Service Act 2006 s 180 has effect with the omission of s 180(2)(c): National Health Service (Consequential Provisions) Act 2006 Sch 3 Pt 2 para 8(1), (2)(a)(ii). As to the coming into force and prospective repeal of the Health Act 2006 s 42(2) see note 9.

12 National Health Service Act 2006 s 180(2)(d). Descriptions of persons may be prescribed for these purposes by reference to any criterion and, in particular, by reference to any of the following criteria: (1) their age (s 180(5)(a)); (2) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition (s 180(5)(b)); (3) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances (s 180(5)(c)); (4) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit (s 180(5)(d)); (5) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits (s 180(5)(e)); and (6) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements (s 180(5)(f)).

13 National Health Service Act 2006 s 180(3)(a). See also note 9.

14 National Health Service Act 2006 s 180(3)(b).

15 As to the meaning of 'financial year' see PARA 132 note 1.

16 National Health Service Act 2006 s 180(10).

17 National Health Service Act 2006 s 180(11).

18 The regulations under the National Health Service Act 2006 s 180: see the text to notes 1-17.

19 National Health Service Act 2006 s 181(1) (s 181 not yet in force). The National Health Service Act 2006 s 181 comes into force immediately after, and to the extent that, the Health Act 2006 s 42(3) is brought into force: see the National Health Service Act 2006 s 277(3)(l), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 Sch 4, the Health Act 2006 s 42(3) is repealed but such repeal does not take effect until s 42(3) is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(n), (5), (6). The Health Act 2006 s 42(3) comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed.

20 National Health Service Act 2006 s 181(2) (not yet in force: see note 19).

21 National Health Service Act 2006 s 181(3) (not yet in force: see note 19). If the regulations make the provision mentioned in s 181(3), they must also make provision conferring prescribed rights of appeal to the Family Health Services Appeal Authority upon the person to whom the notice was given: s 181(8) (not yet in force). As to the Family Health Services Appeal Authority see PARA 443.

22 National Health Service Act 2006 s 181(4) (not yet in force: see note 19). If such a notice is given, no further such payments may be made to him after the date specified in the notice, unless the notice is cancelled by the Secretary of State: s 181(5) (not yet in force).

23 National Health Service Act 2006 s 181(6) (not yet in force: see note 19). A stop order is an order that no further such payments may be made (whether by the Secretary of State or by any relevant body) to the person in question in respect of the supply, replacement or repair of optical appliances, wherever the supply, replacement or repair occurred: s 181(7) (not yet in force).

## **UPDATE**

### **474 Payments in respect of costs of optical appliances**

NOTE 6--Reference to SI 2008/3289 should be to SI 2007/3289. SI 1997/818 further amended: see PARA 473 NOTE 4.

TEXT AND NOTES 10, 11--Head (c) omitted; National Health Service Act 2006 s 180(2)(c) revoked: Health Act 2009 s 34.

NOTES 9, 19--Appointed day is 1 August 2008: SI 2008/1972.

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#### **475. Remission and repayment of charges.**

Regulations<sup>1</sup> may provide in relation to prescribed<sup>2</sup> descriptions of person<sup>3</sup> for the remission or repayment of the whole or any part of any charges which would otherwise<sup>4</sup> be payable<sup>5</sup>. Descriptions of persons may be prescribed for these purposes by reference to any criterion and, in particular, by reference to any of the following criteria: (1) their age<sup>6</sup>; (2) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition<sup>7</sup>; (3) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances<sup>8</sup>; (4) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit<sup>9</sup>; (5) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits<sup>10</sup>; and (6) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements<sup>11</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

3 As to the meaning of 'person' see PARA 17 note 2.

4 Ie by virtue of the National Health Service Act 2006 s 172 (see PARA 469), s 176 (see PARA 471) or s 179 (see PARA 473).

5 National Health Service Act 2006 s 182. As to the equivalent provision to the National Health Service Act 2006 ss 182, 184 in relation to Wales see the National Health Service (Wales) Act 2006 s 130, 132. As to the regulations which have been made see the National Health Service (Charges for Drugs and Appliances) Regulations 2000, SI 2000/620; the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003, SI 2003/2382; the National Health Service (Dental Charges) Regulations 2005, SI 2005/3477 (amended by SI 2006/1837; SI 2007/544; SI 2008/547); all of which have effect under the National Health Service Act 2006 ss 182, 184 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). All the said regulations apply to England only: see the National Health Service (Charges for Drugs and Appliances) Regulations 2000, SI 2000/620, reg 1(2); the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003, SI 2003/2382, reg 1(2); the National Health Service (Dental Charges) Regulations 2005, SI 2005/3477, reg 1(2). As to the equivalent regulations in relation to Wales see the National Health Service (Dental Charges) (Wales) Regulations 2006, SI 2006/491; the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Wales) Regulations 2007, SI 2007/121; the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007, SI 2007/1104. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 National Health Service Act 2006 s 184(1)(a).

7 National Health Service Act 2006 s 184(1)(b).

8 National Health Service Act 2006 s 184(1)(c).

9 National Health Service Act 2006 s 184(1)(d).

10 National Health Service Act 2006 s 184(1)(e).

11 National Health Service Act 2006 s 184(1)(f). The regulations may direct how a person's resources and requirements must be calculated and may, in particular, direct that they must be calculated: (1) by a method set out in the regulations (s 184(2)(a)); (2) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than s 184 or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications (s 184(2)(b)); (3) by



reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament (s 184(2)(c)); or (4) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament (s 184(2)(d)). Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must be construed as a reference to that Act or instrument: (a) as it has effect at the time when the regulations are made (s 184(3)(a)); or (b) both as it has effect at that time and as amended subsequently (s 184(3)(b)). As to the meaning of 'enactment' see PARA 10 note 7. As to the meaning of 'modifications' see PARA 45 note 14.

## **UPDATE**

### **475 Remission and repayment of charges**

NOTE 5--SI 2000/620 amended: SI 2008/1697, SI 2008/1700, SI 2008/2593, SI 2009/29, SI 2009/411, SI 2009/1166, SI 2009/2230. SI 2003/2382 amended: SI 2008/1697, SI 2008/1700, SI 2008/2868, SI 2009/411, SI 2009/1599, SI 2010/620. SI 2006/491 amended: SI 2009/456. SI 2007/1104 amended: SI 2008/1480, SI 2008/1879, SI 2008/2568, SI 2009/54, SI 2009/709, SI 2009/1824, SI 2009/2365, SI 2010/1237. SI 2005/3477 further amended: SI 2009/407. SI 2007/121 amended: SI 2009/1175, SI 2009/2607.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/A. POWERS TO CHARGE/476. Payment of travelling expenses.

#### **476. Payment of travelling expenses.**

Regulations<sup>1</sup> may provide in relation to prescribed<sup>2</sup> descriptions of persons<sup>3</sup>: (1) for the payment by the Secretary of State<sup>4</sup>, a primary care trust<sup>5</sup>, an NHS trust<sup>6</sup> or an NHS foundation trust<sup>7</sup>, in such cases as may be prescribed, of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their obtaining any services provided under the National Health Service Act 2006<sup>8</sup>; (2) for the reimbursement by a primary care trust to an NHS trust or an NHS foundation trust and, in such cases as may be prescribed, to another primary care trust, of such payments<sup>9</sup>; (3) for the reimbursement by a primary care trust to an NHS trust and, in such cases as may be prescribed, to a local health board<sup>10</sup>, of payments in respect of travelling expenses made<sup>11</sup> by virtue of the National Health Service (Wales) Act 2006<sup>12</sup>.

Descriptions of persons may be prescribed for these purposes by reference to any criterion and, in particular, by reference to any of the following criteria: (a) their age<sup>13</sup>; (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition<sup>14</sup>; (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances<sup>15</sup>; (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit<sup>16</sup>; (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits<sup>17</sup>; and (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements<sup>18</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the Secretary of State see PARA 6 note 8.

5 As to primary care trusts see PARA 111.

6 As to NHS trusts see PARA 155.

7 As to NHS foundation trusts see PARA 174.

8 National Health Service Act 2006 s 183(a). As to the provision of services under the National Health Service Act 2006 see PARA 10 et seq.

9 National Health Service Act 2006 s 183(b).

10 As to the meaning of 'local health board' see PARA 17 note 13.

11 ie by virtue of the National Health Service (Wales) Act 2006 s 131(a).

12 National Health Service Act 2006 s 183(c). As to the equivalent provision to the National Health Service Act 2006 ss 183, 184 in relation to Wales see the National Health Service (Wales) Act 2006 ss 131, 132. As to the regulations which have been made see the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003, SI 2003/2382, which have effect under the National Health Service Act 2006 ss 183, 184 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). The National Health Service (Travel Expenses and Remission of Charges) Regulations 2003, SI 2003/2382, apply

to England only: see reg 1(2). As to the equivalent regulations in relation to Wales see the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007, SI 2007/1104.

13 National Health Service Act 2006 s 184(1)(a).

14 National Health Service Act 2006 s 184(1)(b).

15 National Health Service Act 2006 s 184(1)(c).

16 National Health Service Act 2006 s 184(1)(d).

17 National Health Service Act 2006 s 184(1)(e).

18 National Health Service Act 2006 s 184(1)(f). The regulations may direct how a person's resources and requirements must be calculated and may, in particular, direct that they must be calculated: (1) by a method set out in the regulations (s 184(2)(a)); (2) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than s 184 or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications (s 184(2)(b)); (3) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament (s 184(2)(c)); or (4) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament (s 184(2)(d)). Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must be construed as a reference to that Act or instrument: (a) as it has effect at the time when the regulations are made (s 184(3)(a)); or (b) both as it has effect at that time and as amended subsequently (s 184(3)(b)). As to the meaning of 'enactment' see PARA 10 note 7. As to the meaning of 'modifications' see PARA 45 note 14.

## **UPDATE**

### **476 Payment of travelling expenses**

NOTE 12--SI 2003/2382 amended: SI 2008/571, SI 2008/843, SI 2008/1697, SI 2008/1700, SI 2008/2868, SI 2009/411, SI 2009/1599, SI 2010/620. SI 2007/1104 amended: SI 2008/1480, SI 2008/1879, SI 2008/2568, SI 2009/54, SI 2009/709, SI 2009/1824, SI 2009/2365, SI 2010/1237.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/A. POWERS TO CHARGE/477. Charges for more expensive supplies.

#### **477. Charges for more expensive supplies.**

Regulations<sup>1</sup> may provide for the making and recovery of such particular charges as may be prescribed<sup>2</sup>. The charges in question are charges by the Secretary of State<sup>3</sup>, a primary care trust<sup>4</sup>, an NHS trust<sup>5</sup> or an NHS foundation trust<sup>6</sup>: (1) in respect of the supply of any appliance or vehicle which is, at the request of the person<sup>7</sup> supplied, of a more expensive type than the prescribed type<sup>8</sup>; or (2) in respect of the repair or replacement of any such appliance, or the replacement of any such vehicle, or the taking of any action<sup>9</sup> in relation to the vehicle<sup>10</sup>. Where the regulations provide for the making and recovery of charges in respect of any services<sup>11</sup> they may provide for the sums which would otherwise be payable by a primary care trust or special health authority<sup>12</sup> to the persons by whom the services are provided, to be reduced by the amount of the charges authorised by the regulations in respect of the services<sup>13</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 National Health Service Act 2006 s 185(1). 'Prescribed' means prescribed by regulations: s 275(1). As to the equivalent provision to the National Health Service Act 2006 s 185 in relation to Wales see the National Health Service (Wales) Act 2006 s 133. As to the regulations which have been made see the National Health Service (Charges for Appliances) Regulations 1974, SI 1974/284, which have effect under the National Health Service Act 2006 s 185 and the National Health Service (Wales) Act 2006 s 133 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). See also the National Health Service (Wheelchair Charges) Regulations 1996, SI 1996/1503, which apply only to England (see reg 3), and which have effect under the National Health Service Act 2006 s 185 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 As to the Secretary of State see PARA 6 note 8.

4 As to primary care trusts see PARA 111.

5 As to NHS trusts see PARA 155.

6 As to NHS foundation trusts see PARA 174.

7 As to the meaning of 'person' see PARA 17 note 2.

8 National Health Service Act 2006 s 185(2)(a).

9 As is mentioned in the National Health Service Act 2006 Sch 1 para 10(2): see PARA 35.

10 National Health Service Act 2006 s 185(2)(b).

11 See the National Health Service Act 2006 s 188(1)(c). As to the equivalent provision to the National Health Service Act 2006 s 188 in relation to Wales see the National Health Service (Wales) Act 2006 s 136.

12 As to special health authorities see PARA 136.

13 National Health Service Act 2006 s 188(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/A. POWERS TO CHARGE/478. Charges for repairs and replacements in certain cases.

#### **478. Charges for repairs and replacements in certain cases.**

Regulations<sup>1</sup> may provide for the making and recovery of such particular charges as may be prescribed<sup>2</sup>. The charges in question are charges by the Secretary of State<sup>3</sup>, a primary care trust<sup>4</sup>, an NHS trust<sup>5</sup> or an NHS foundation trust<sup>6</sup>, in respect of the repair or replacement of any appliance or vehicle, where it is determined in the prescribed manner: (1) in any case, that the repair or replacement was necessitated by an act or omission of the person supplied<sup>7</sup>; or (2) in a case where the person supplied was under the age of 16<sup>8</sup>, that the repair or replacement was necessitated by an act or omission, occurring while that person was under that age, of a person having charge of him<sup>9</sup>.

Where the regulations provide for the making and recovery of charges in respect of any services<sup>10</sup> they may provide for the sums which would otherwise be payable by a primary care trust or special health authority<sup>11</sup> to the persons by whom the services are provided, to be reduced by the amount of the charges authorised by the regulations in respect of the services<sup>12</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 National Health Service Act 2006 s 186(1). 'Prescribed' means prescribed by regulations: s 275(1). As to the equivalent provision to the National Health Service Act 2006 s 186 in relation to Wales see the National Health Service (Wales) Act 2006 s 134. As to the regulations which have been made see the National Health Service (Charges for Appliances) Regulations 1974, SI 1974/284, which have effect under the National Health Service Act 2006 s 186 and the National Health Service (Wales) Act 2006 s 134 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). As to the meaning of 'Wales' see PARA 6 note 2.

3 As to the Secretary of State see PARA 6 note 8.

4 As to primary care trusts see PARA 111.

5 As to NHS trusts see PARA 155.

6 As to NHS foundation trusts see PARA 174.

7 National Health Service Act 2006 s 186(2)(a). As to the meaning of 'person' see PARA 17 note 2.

8 As to the time at which a person attains a particular age see para 36 note 7.

9 National Health Service Act 2006 s 186(2)(b).

10 See the National Health Service Act 2006 s 188(1)(d). As to the equivalent provision to the National Health Service Act 2006 s 188 in relation to Wales see the National Health Service (Wales) Act 2006 s 136.

11 As to special health authorities see PARA 136.

12 National Health Service Act 2006 s 188(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/A. POWERS TO CHARGE/479. Charges for designated services or facilities.

**479. Charges for designated services or facilities.**

Regulations<sup>1</sup> may provide for the making and recovery of charges in respect of services or facilities<sup>2</sup> designated by the regulations as services or facilities provided in pursuance of the Secretary of State's<sup>3</sup> duty to provide services or facilities<sup>4</sup> for the care of pregnant women, women who are breastfeeding and young children, and for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness<sup>5</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 As to the meaning of 'facilities' see PARA 12 note 7.

3 As to the Secretary of State see PARA 6 note 8.

4 The services or facilities provided in pursuance of the National Health Service Act 2006 s 3(1)(d) or (e): see PARA 12.

5 National Health Service Act 2006 s 187. As to the equivalent provision to the National Health Service Act 2006 s 187 in relation to Wales see the National Health Service (Wales) Act 2006 s 135. As to the meaning of 'Wales' see PARA 6 note 2. As to the regulations which have been made see the Sale of Goods for Mothers and Children (Designation and Charging) Regulations 1976, SI 1976/516, which have effect under the National Health Service Act 2006 s 187 and the National Health Service (Wales) Act 2006 s 135 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/A. POWERS TO CHARGE/480. Hospital accommodation on part payment.

#### **480. Hospital accommodation on part payment.**

The Secretary of State<sup>1</sup> may authorise accommodation to be made available for patients<sup>2</sup> to such extent as he may determine<sup>3</sup>; and may recover such charges<sup>4</sup> as he may determine in respect of such accommodation and calculate them on any basis that he considers to be the appropriate commercial basis<sup>5</sup>. 'Accommodation' means: (1) accommodation in single rooms or small wards which is not needed by any patient on medical grounds<sup>6</sup>; (2) accommodation at any health service hospital<sup>7</sup> or group of hospitals, or a hospital in which patients are treated under arrangements made by the Secretary of State<sup>8</sup>, or at the health service hospitals in a particular area or a hospital in which patients are so treated<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89.

2 As to the meaning of 'patient' see PARA 15 note 6.

3 National Health Service Act 2006 s 189(1)(a). As to the equivalent provision to the National Health Service Act 2006 s 189 in relation to Wales see the National Health Service (Wales) Act 2006 s 137. As to the meaning of 'Wales' see PARA 6 note 2.

4 As to the recovery of charges see PARA 482.

5 National Health Service Act 2006 s 189(1)(b).

6 National Health Service Act 2006 s 189(2)(a). As to the meaning of 'medical' see PARA 10 note 5.

7 As to the meaning of 'health service hospital' see PARA 21 note 7. References in s 189(2) to a health service hospital include references to such a hospital within the meaning of the National Health Service (Wales) Act 2006 s 206 (see PARA 21 note 7), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust: s 189(3). As to the meaning of 'hospital' see PARA 12 note 4. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174.

8 In virtue of the National Health Service Act 2006 s 12: see PARA 17.

9 National Health Service Act 2006 s 189(2)(b).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/A. POWERS TO CHARGE/481. Expenses payable by employed patients.

**481. Expenses payable by employed patients.**

The Secretary of State<sup>1</sup> may require any person who is a resident patient<sup>2</sup> for whom the Secretary of State provides services under the National Health Service Act 2006<sup>3</sup>, and who is absent during the day from the hospital<sup>4</sup> where he is a patient for the purpose of engaging in remunerative employment<sup>5</sup>, to pay such part of the cost of his maintenance in the hospital and any incidental cost as may seem reasonable to the Secretary of State having regard to the amount of that person's remuneration<sup>6</sup>. The Secretary of State may recover the amount so required<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the meaning of 'patient' see PARA 15 note 6.

3 National Health Service Act 2006 s 190(1)(a). As to the provision of services under the National Health Service Act 2006 see PARA 10 et seq. As to the equivalent provision to the National Health Service Act 2006 s 190 in relation to Wales see the National Health Service (Wales) Act 2006 s 138. As to the meaning of 'Wales' see PARA 6 note 2.

4 As to the meaning of 'hospital' see PARA 12 note 4.

5 National Health Service Act 2006 s 190(1)(b).

6 National Health Service Act 2006 s 190(1).

7 National Health Service Act 2006 s 190(2). As to the recovery of charges see PARA 482.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/B. RECOVERY OF CHARGES/482. Recovery of charges.

## ***B. RECOVERY OF CHARGES***

### **482. Recovery of charges.**

All charges recoverable under the National Health Service Act 2006<sup>1</sup> by the Secretary of State<sup>2</sup>, a local social services authority<sup>3</sup>, or any body established under the Act<sup>4</sup>, may be recovered summarily as a civil debt<sup>5</sup> (but this does not affect any other method of recovery)<sup>6</sup>. If any person<sup>7</sup>, for the purpose of evading the payment of any charge under the Act, or of reducing the amount of any such charge knowingly makes any false statement or false representation<sup>8</sup>, or produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular<sup>9</sup>, the charge or the balance of the charge may be recovered from him by the person by whom the cost of the service in question was defrayed<sup>10</sup>.

1 As to powers to charge see PARA 469 et seq. As to the recovery of charges and payments in relation to goods and services see PARA 483. As to penalties relating to charges see PARA 484. As to offences relating to charges see PARA 485.

2 National Health Service Act 2006 s 191(1)(a). As to the Secretary of State see PARA 6 note 8.

3 National Health Service Act 2006 s 191(1)(b). As to the meaning of 'local social services authority' see PARA 24 note 9.

4 National Health Service Act 2006 s 191(1)(c).

5 As to the summary recovery of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

6 National Health Service Act 2006 s 191(1). As to the equivalent provision to the National Health Service Act 2006 s 191 in relation to Wales see the National Health Service (Wales) Act 2006 s 139. As to the meaning of 'Wales' see PARA 6 note 2.

7 As to the meaning of 'person' see PARA 17 note 2.

8 National Health Service Act 2006 s 191(2)(a).

9 National Health Service Act 2006 s 191(2)(b).

10 National Health Service Act 2006 s 191(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(i) Charges for Services/B. RECOVERY OF CHARGES/483. Recovery of charges and payments in relation to goods and services.

### **483. Recovery of charges and payments in relation to goods and services.**

Where certain goods<sup>1</sup> or services are provided and: (1) any charge payable by any person<sup>2</sup> under the National Health Service Act 2006<sup>3</sup> in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment<sup>4</sup>; or (2) any payment under the Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment<sup>5</sup>, the specified amount<sup>6</sup> is recoverable summarily as a civil debt<sup>7</sup> from the person in question by the responsible authority<sup>8</sup>. The goods and services concerned are: (a) dental treatment and appliances provided in pursuance of the Act<sup>9</sup>; (b) drugs and medicines<sup>10</sup> provided in pursuance of the Act<sup>11</sup>; (c) sight tests<sup>12</sup>; (d) optical appliances<sup>13</sup>; (e) any other appliances provided in pursuance of the Act<sup>14</sup>.

For these purposes, the circumstances in which a person is treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly): (i) on the ground that he or another is a person of a particular description, where the person in question is not of that description<sup>15</sup>; (ii) on the ground that he or another holds a particular certificate, when the person in question does not hold such a certificate or does hold such a certificate but is not entitled to it<sup>16</sup>; (iii) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false<sup>17</sup>.

Where two or more persons are liable<sup>18</sup> to pay an amount in respect of the same charge or payment, those persons are jointly and severally liable<sup>19</sup>.

1 As to the meaning of 'goods' see PARA 12 note 7.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to powers to charge see PARA 469 et seq.

4 National Health Service Act 2006 s 192(1)(a). As to the equivalent provision to the National Health Service Act 2006 s 192 in relation to Wales see the National Health Service (Wales) Act 2006 s 140. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 s 192(1)(b).

6 The specified amount: (1) in a case within the National Health Service Act 2006 s 192(1)(a) (see the text to notes 2-4), is the amount of the charge or (where it has been reduced) reduction (s 192(2)(a)); (2) in a case within s 192(1)(b) (see the text to note 5), is the amount of the payment (s 192(2)(b)).

7 As to the summary recovery of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

8 National Health Service Act 2006 s 192(1). 'Responsible authority' means: (1) in relation to the recovery of any charge under s 191(1) (see PARA 482) in respect of the provision of goods or services to which s 192 applies, the person by whom the charge is recoverable (s 192(5)(a)); (2) in relation to the recovery by virtue of s 192 of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable (s 192(5)(b)); (3) in a case within s 192(1)(b) (see the text to note 5), the person who made the payment (s 192(5)(c)). However, the Secretary of State may by directions provide for: (a) the functions of any responsible authority of recovering any charges under the National Health Service Act 2006 in respect of the provision of goods or services to which s 192 applies (s 192(6)(a)); (b) the functions of any responsible authority under s 192 and s 193 (see PARA 484) (s 192(6)(b)), to be exercised on behalf of the authority by another health service body (s 192(6)). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. Directions under s 192(6) must be given by an instrument

in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'functions' see PARA 6 note 3. 'Health service body' means a body which is a health service body for the purposes of s 9 (see PARA 228): s 192(8).

9 National Health Service Act 2006 s 192(7)(a). As to dental services see PARA 277 et seq. As to the power to charge for dental services see PARA 471.

10 As to the meaning of 'medicine' see PARA 339 note 4.

11 National Health Service Act 2006 s 192(7)(b). As to the power to charge for the provision of drugs and medicines see PARA 469.

12 National Health Service Act 2006 s 192(7)(c). As to sight tests see PARAS 324-326, 328.

13 National Health Service Act 2006 s 192(7)(d). As to the meaning of 'optical appliances' see PARA 473 note 4. As to the power to charge for optical appliances see PARA 473.

14 National Health Service Act 2006 s 192(7)(e).

15 National Health Service Act 2006 s 192(4)(a).

16 National Health Service Act 2006 s 192(4)(b).

17 National Health Service Act 2006 s 192(4)(c).

18 le under the National Health Service Act 2006 s 191(1) (see PARA 482) or s 192.

19 National Health Service Act 2006 s 192(3).

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#### **484. Penalties relating to charges.**

Regulations<sup>1</sup> may provide that, where a person<sup>2</sup> fails to pay: (1) any amount recoverable from him<sup>3</sup> in respect of the provision of goods<sup>4</sup> or services<sup>5</sup>; or (2) any amount recoverable<sup>6</sup> from him<sup>7</sup>, a penalty notice may be served on the person by the responsible authority<sup>8</sup>. A penalty notice is a notice requiring the person on whom it is served to pay the amount to the authority within a prescribed<sup>9</sup> period, together with a penalty charge of an amount determined in accordance with the regulations<sup>10</sup>. Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations<sup>11</sup>.

Any sum payable under the regulations<sup>12</sup> may be recovered by the responsible authority summarily as a civil debt<sup>13</sup>. However, a person is not liable by virtue of a penalty notice: (a) to pay at any time so much of any amount referred to head (1) or (2) above for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other<sup>14</sup>; or (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question<sup>15</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9.

2 As to the meaning of 'person' see PARA 17 note 2.

3 Ie under the National Health Service Act 2006 s 191(1): see PARA 482.

4 As to the meaning of 'goods' see PARA 12 note 7.

5 National Health Service Act 2006 s 193(1)(a). The goods or services in question are those to which s 192 (see PARA 483) applies: s 193(1)(a).

6 Ie under the National Health Service Act 2006 b s 192: see PARA 483.

7 National Health Service Act 2006 s 193(1)(b).

8 National Health Service Act 2006 s 193(1). As to the meaning of 'responsible authority' see PARA 483 note 8. As to the equivalent provision to the National Health Service Act 2006 s 193 in relation to Wales see the National Health Service (Wales) Act 2006 s 141. As to the meaning of 'Wales' see PARA 6 note 2. As to the regulations which have been made see the National Health Service (Penalty Charge) Regulations 1999, SI 1999/2794, which have effect under the National Health Service Act 2006 s 193 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2). As to the equivalent regulations in relation to Wales see the National Health Service (Penalty Charge) (Wales) Regulations 2001, SI 2001/1300.

9 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

10 National Health Service Act 2006 s 193(2). The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of: (1) £100 (s 193(3)(a)); (2) the amount referred to in s 193(1)(a) or (b) (see the text to notes 1-7) multiplied by 5 (s 193(3)(b)). The Secretary of State may by order provide for s 193(3) to have effect as if, for the sum specified in s 193(3)(a) or the multiplier specified in s 193(3)(b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or multiplier specified in the order: s 193(4). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the making of orders see PARA 9. At the date at which this volume states the law no such order had been made.

11 National Health Service Act 2006 s 193(5). The further sum must not exceed 50% of the amount of the penalty charge: s 193(6). As to the regulations made see note 8.

12 Ie including the amount referred to in the National Health Service Act 2006 s 193(1)(a) or (b): see the text to notes 1-7.

13 National Health Service Act 2006 s 193(7). As to the summary recovery of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

14 National Health Service Act 2006 s 193(8)(a).

15 National Health Service Act 2006 s 193(8)(b).

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#### **485. Offences relating to charges.**

A person is guilty of an offence<sup>1</sup> if he:

- 319 (1) knowingly makes, or causes or knowingly allows another to make, a false statement or representation<sup>2</sup>; or
- 320 (2) in the case of any document or information which he knows to be false in a material particular, produces or provides it or causes or knowingly allows another to produce or provide it<sup>3</sup>,

with a view to securing for himself or another: (a) the evasion of the whole or part of any charge under the National Health Service Act 2006 in respect of the provision of goods<sup>4</sup> or services<sup>5</sup>; (b) the reduction, remission or repayment of any such charge, where he or the other is not entitled to the reduction, remission or repayment<sup>6</sup>; (c) a payment under the Act (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or the other is not entitled to, or to the benefit of, the payment<sup>7</sup>.

Proceedings for such an offence may be begun within: (i) the period of three months<sup>8</sup> beginning with the date on which evidence, sufficient in the opinion of the Secretary of State<sup>9</sup> to justify a prosecution for the offence, comes to his knowledge<sup>10</sup>; or (ii) the period of 12 months beginning with the commission of the offence<sup>11</sup>. A person, although he is not a barrister or solicitor, may conduct any proceedings under these provisions before a magistrates' court if he is authorised to do so by the Secretary of State<sup>12</sup>.

Where a person is convicted of such an offence in respect of any charge or payment under the National Health Service Act 2006, he is not liable in respect of the charge or payment to pay any penalty charge or further sum by way of penalty which would otherwise<sup>13</sup> be recoverable from him<sup>14</sup>. Where a person pays any penalty charge, or further charge by way of penalty, recoverable<sup>15</sup> in respect of any charge or payment under the Act, he must not be convicted of such an offence in respect of the charge or payment<sup>16</sup>.

1 A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: National Health Service Act 2006 s 194(3). As to the standard scale see PARA 28 note 12. As to the equivalent provision to the National Health Service Act 2006 s 194 in relation to Wales see the National Health Service (Wales) Act 2006 s 142. As to the meaning of 'Wales' see PARA 6 note 2.

2 See the National Health Service Act 2006 s 194(2)(a).

3 See the National Health Service Act 2006 s 194(2)(b).

4 As to the meaning of 'goods' see PARA 12 note 7.

5 National Health Service Act 2006 s 194(1)(a). The goods or services referred to are those to which s 192 (see PARA 483) applies: s 194(1)(a).

6 National Health Service Act 2006 s 194(1)(b). Section 192(4) (see PARA 483) applies for the purposes of s 194 as it applies for the purposes of that section: s 194(9).

7 National Health Service Act 2006 s 194(1)(c). See also note 6.

8 As to the meaning of 'month' see PARA 28 note 16.

9 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

10 National Health Service Act 2006 s 194(5)(a). A certificate purporting to be signed by or on behalf of the Secretary of State as to the date on which such evidence came to his knowledge, is conclusive evidence of that date: s 194(6).

11 National Health Service Act 2006 s 194(5)(b).

12 National Health Service Act 2006 s 194(4). As to magistrates' courts see **MAGISTRATES** vol 29(2) (Reissue) PARA 583 et seq.

13 Ie under the National Health Service Act 2006 s 193: see PARA 484.

14 National Health Service Act 2006 s 194(7).

15 Ie under the National Health Service Act 2006 s 193: see PARA 484.

16 National Health Service Act 2006 s 194(8).

## **UPDATE**

### **485 Offences relating to charges**

NOTE 1--National Health Service (Wales) Act 2006 s 142 amended: Legal Services Act 2007 Sch 21 para 155, Sch 23.

TEXT AND NOTE 12--Words 'although he is not a barrister or solicitor' omitted: National Health Service Act 2006 s 194(4) (amended by Legal Services Act 2007 Sch 21 para 154, Sch 23).

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## (ii) Recovery of NHS Charges in Personal Injury Cases

### 486. Liability to pay NHS charges.

If:

- 321 (1) a person<sup>1</sup> makes a compensation payment<sup>2</sup> to or in respect of any other person (known as the 'injured person') in consequence of any injury<sup>3</sup>, whether physical or psychological, suffered by the injured person<sup>4</sup>; and
- 322 (2) the injured person has (a) received NHS treatment<sup>5</sup> at a health service hospital as a result of the injury<sup>6</sup>; (b) been provided with NHS ambulance services<sup>7</sup> as a result of the injury for the purpose of taking him to a health service hospital for NHS treatment (unless he was dead on arrival at that hospital)<sup>8</sup>; or (c) received treatment as mentioned in head (a) above and been provided with ambulance services as mentioned in head (b) above<sup>9</sup>,

the person making the compensation payment is liable to pay the relevant NHS charges<sup>10</sup> in respect of the treatment, in so far as received at a hospital in England or Wales<sup>11</sup>, and the ambulance services, in so far as provided to take the injured person to such a hospital<sup>12</sup>, to the Secretary of State<sup>13</sup>.

1 As to the meaning of 'person' see PARA 17 note 2. The Health and Social Care (Community Health and Standards) Act 2003 Pt 3 (ss 150-169) binds the Crown: s 166. As to the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 353.

2 For these purposes, it is irrelevant whether a compensation payment is made with or without an admission of liability: Health and Social Care (Community Health and Standards) Act 2003 s 150(14). 'Compensation payment' means a payment, including a payment in money's worth, made: (1) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the injury (s 150(3)(a)); or (2) in pursuance of a compensation scheme for motor accidents (s 150(3)(b)); but does not include an exempted payment (s 150(3)). 'Injury' does not include any disease (s 150(5)); but nothing in s 150(5) prevents Pt 3 (ss 150-169) from applying to treatment received as a result of any disease suffered by the injured person (s 150(6)(a)), or ambulance services provided as a result of any disease suffered by him (s 150(6)(b)), if the disease in question is attributable to the injury suffered by the injured person (and accordingly that treatment is received or those services are provided as a result of the injury) (s 150(6)). 'Compensation scheme for motor accidents' means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to have been caused, by uninsured or unidentified persons: s 150(11). As to such schemes see **INSURANCE** vol 25 (Reissue) PARA 757 et seq. As to exempted payments see Sch 10. Regulations may amend Sch 10 by omitting or modifying any payment for the time being specified in that Schedule: s 150(12). As to the making of regulations see PARA 502. As to the regulations made see the Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 11.

3 The Health and Social Care (Community Health and Standards) Act 2003 s 150 applies in relation to any injury which occurs after 28 January 2007: s 150(13). 28 January 2007 is the date on which s 150 came into force: see s 150(13); the Health and Social Care (Community Health and Standards) Act 2003 (Commencement) (No 11) Order 2006, SI 2006/3397, art 2(1).

4 Health and Social Care (Community Health and Standards) Act 2003 s 150(1)(a). Section 150(1)(a) applies to a payment made voluntarily, or in pursuance of a court order or an agreement, or otherwise (s 150(4)(a)(i)), and in the United Kingdom or elsewhere (s 150(4)(a)(ii)); and if more than one payment is made, to each payment (s 150(4)(b)). As to the meaning of 'United Kingdom' see PARA 15 note 8.



5 'NHS treatment' means any treatment (including any examination of the injured person) other than: (1) treatment provided by virtue of the National Health Service Act 2006 s 21(4) (see PARA 129), s 44(6) (see PARA 206), Sch 2 para 15 (see PARA 109) or Sch 6 para 11 (see PARA 143), the National Health Service (Wales) Act 2006 Sch 2 para 15 or Sch 5 para 11, or the National Health Service (Scotland) Act 1978 s 57 or Sch 7A para 14 (Health and Social Care (Community Health and Standards) Act 2003 s 150(7)(a) (substituted by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 239, 247(a)); (2) other treatment provided by an NHS foundation trust in pursuance of an undertaking to pay in respect of the treatment given by or on behalf of the injured person (Health and Social Care (Community Health and Standards) Act 2003 s 150(7)(b)); (3) treatment provided at a health service hospital by virtue of the National Health Service Act 2006 s 267 (see PARA 747), the National Health Service (Wales) Act 2006 s 198 or the National Health Service (Scotland) Act 1978 s 64 (Health and Social Care (Community Health and Standards) Act 2003 s 150(7)(c) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 247(b)); or (4) treatment provided by virtue of the National Health Service Act 2006 s 83 (see PARA 241), s 84 (see PARA 242), s 92 (see PARA 267), s 99 (see PARA 277), s 100 (see PARA 278) or s 107 (see PARA 288), the National Health Service (Wales) Act 2006 s 41, 42, 50, 56, 57 or 64, or the National Health Service (Scotland) Act 1978 s 2C, 17C, 17J or 25 (Health and Social Care (Community Health and Standards) Act 2003 s 150(7)(d) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 247(c); Health Act 2006 s 80(1), Sch 8 paras 53, 55)). As to NHS foundation trusts see PARA 174. As to the meaning of 'health service hospital' see PARA 21 note 7: definition applied by the Health and Social Care (Community Health and Standards) Act 2003 s 168 (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 251(a)).

6 Health and Social Care (Community Health and Standards) Act 2003 s 150(1)(b)(i).

7 'NHS ambulance services' means ambulance services provided under the National Health Service Act 2006 s 3(1)(c) (see PARA 12) or the National Health Service (Wales) Act 2006 s 3(1)(c) (see PARA 74): Health and Social Care (Community Health and Standards) Act 2003 s 168 (definition amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 251(b)).

8 Health and Social Care (Community Health and Standards) Act 2003 s 150(1)(b)(ii).

9 Health and Social Care (Community Health and Standards) Act 2003 s 150(1)(b)(iii).

10 'Relevant NHS charges' means the amount (or amounts) specified in a certificate of NHS charges issued under the Health and Social Care (Community Health and Standards) Act 2003 Pt 3 (ss 150-169) in respect of the injured person to the person making the compensation payment (s 150(10)(a)), and in force (s 150(10)(b)). As to certificates see PARA 487.

11 Health and Social Care (Community Health and Standards) Act 2003 s 150(2)(a)(i). As to the meanings of 'England' and 'Wales' see para 6 note 2.

12 Health and Social Care (Community Health and Standards) Act 2003 s 150(2)(a)(ii).

13 Health and Social Care (Community Health and Standards) Act 2003 s 150(2)(a). As to the Secretary of State see PARA 6 note 8. In so far as the charges relate to treatment received at a hospital in Scotland, and ambulance services provided to take the injured person to such a hospital, the payment must be made to the Scottish Ministers: see s 150(2)(b). As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the provision of information with respect to the circumstances of a case see PARA 496. As to the use of information held by the Secretary of State see PARA 497.

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#### **487. Certificates of NHS charges.**

Before a person<sup>1</sup> makes a compensation payment<sup>2</sup> in consequence of any injury<sup>3</sup> suffered by an injured person<sup>4</sup>, he may apply for a certificate to the Secretary of State<sup>5</sup>, the Scottish Ministers<sup>6</sup> or both, according to whether he believes the relevant NHS charges<sup>7</sup> payable by him (if any) would be due to the Secretary of State, the Scottish Ministers or both<sup>8</sup>. If: (1) at the time the payment is made by the person no certificate has been issued to him in respect of the injured person<sup>9</sup>, or if such a certificate has been issued to him, it is no longer in force<sup>10</sup>; and (2) no application for a certificate has been made by him during the prescribed period<sup>11</sup> ending immediately before the day on which the compensation payment is made<sup>12</sup>, a person who has made a compensation payment in consequence of an injury suffered by an injured person must apply for a certificate to the Secretary of State, the Scottish Ministers or both, according to whether he believes the relevant NHS charges payable by him (if any) would be due to the Secretary of State, the Scottish Ministers or both<sup>13</sup>. An application for a certificate must be made in the prescribed manner<sup>14</sup> and within<sup>15</sup> the prescribed period<sup>16</sup>.

If the Secretary of State receives or the Scottish Ministers receive an application<sup>17</sup>, he or they must arrange for a certificate to be issued as soon as is reasonably practicable<sup>18</sup>. A certificate may provide that it is to remain in force until a specified date<sup>19</sup>, until the occurrence of a specified event<sup>20</sup>, or indefinitely<sup>21</sup>. If a certificate expires, the Secretary of State or the Scottish Ministers (as the case may be) may arrange for a fresh certificate to be issued without an application having to be made<sup>22</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the meaning of 'compensation payment' see PARA 486 note 2.

3 As to the meaning of 'injury' see PARA 486 note 2.

4 As to the meaning of 'injured person' see PARA 486.

5 As to the Secretary of State see PARA 6 note 8.

6 As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 As to the meaning of 'relevant NHS charges' see PARA 486 note 10.

8 Health and Social Care (Community Health and Standards) Act 2003 s 151(1). A person may apply under s 151(1) for a fresh certificate from time to time: s 151(4). See also note 18.

9 Health and Social Care (Community Health and Standards) Act 2003 s 151(8)(a)(i).

10 Health and Social Care (Community Health and Standards) Act 2003 s 151(8)(a)(ii).

11 'Prescribed' means prescribed by regulations: Health and Social Care (Community Health and Standards) Act 2003 s 168. As to the making of regulations see PARA 502. The prescribed period for these purposes is 28 days: Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 2(3).

12 Health and Social Care (Community Health and Standards) Act 2003 s 151(8)(b).

13 Health and Social Care (Community Health and Standards) Act 2003 s 151(7).

14 An application for a certificate must be made to the Compensation Recovery Unit: Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 2(1). As to the particulars to be included in an application see reg 2(1)(a)-(h). 'Compensation Recovery Unit' means the Compensation Recovery Unit of the Department for Work and Pensions: reg 1(3).

15 In the case of an application under the Health and Social Care (Community Health and Standards) Act 2003 s 151(7): see the text to note 13. An application under the Health and Social Care (Community Health and Standards) Act 2003 s 151(7) must be made not later than 14 days after the date on which the compensation payment is made: Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 2(2).

16 Health and Social Care (Community Health and Standards) Act 2003 s 151(9). If an application is made under the Health and Social Care (Community Health and Standards) Act 2003 s 151(1) (see the text to notes 1-8) or (7) (see the text to note 13) to the Secretary of State or the Scottish Ministers (s 152(1)(a)), and it appears to the Secretary of State or the Scottish Ministers that the relevant NHS charges payable by the applicant (if any) would be due to the Scottish Ministers or the Secretary of State (respectively) instead (s 152(1)(b)), the Secretary of State or the Scottish Ministers (as the case may be) must refer the application to the Scottish Ministers or the Secretary of State (respectively), and the application is to be treated as having been made to the Scottish Ministers or the Secretary of State (as the case may be) (s 152(2)). If an application is made under s 151(1) or (7) to the Secretary of State or the Scottish Ministers (s 152(3)(a)), and it appears to the Secretary of State or the Scottish Ministers that the relevant NHS charges payable by the applicant (if any) would be due in part to him or them and in part to the Scottish Ministers or the Secretary of State (respectively) (s 152(3)(b)), the Secretary of State or the Scottish Ministers (as the case may be) must refer the application to the Scottish Ministers or the Secretary of State (respectively) in so far as the application relates to relevant NHS charges due to them or him, and the application is to be treated as having been made to the Secretary of State in so far as it relates to relevant NHS charges due to him under s 150(2) (see PARA 486) and to the Scottish Ministers in so far as it relates to relevant NHS charges so due to them (s 152(4)).

17 In the case of an application under the Health and Social Care (Community Health and Standards) Act 2003 s 151(1) or (7): see the text to notes 1-8, 13.

18 See the Health and Social Care (Community Health and Standards) Act 2003 s 151(2), (10). Section 151(2) does not require the Secretary of State or the Scottish Ministers to arrange for a fresh certificate to be issued to a person applying under s 151(4) (see note 8) if, when the application is received, a certificate issued to the applicant in respect of the injured person is still in force; but the Secretary of State or the Scottish Ministers (as the case may be) may arrange for a fresh certificate to be issued so as to have effect on the expiry of the current certificate: s 151(5). A certificate may be issued jointly by the Secretary of State and the Scottish Ministers specifying an amount (or amounts) for which a person is liable under s 150(2) (see PARA 486) to the Secretary of State (s 152(5)(a)), and an amount (or amounts) for which that person is so liable to the Scottish Ministers (s 152(5)(b)), in respect of the same injured person in consequence of the same injury (s 152(5)). In the case of a certificate issued specifying an amount (or amounts) as mentioned in s 152(5)(a) and (b), references in ss 153-169 to a certificate are to be taken as being to the certificate in so far as it relates to the liability to the Secretary of State or in so far as it relates to the liability to the Scottish Ministers (as the case may require): s 152(6). As to the information to be contained in certificates see PARA 488. As to review of certificates see PARA 491. As to appeals against certificates see PARA 492.

19 Health and Social Care (Community Health and Standards) Act 2003 s 151(3)(a).

20 Health and Social Care (Community Health and Standards) Act 2003 s 151(3)(b).

21 Health and Social Care (Community Health and Standards) Act 2003 s 151(3)(c).

22 Health and Social Care (Community Health and Standards) Act 2003 s 151(6).

## **UPDATE**

### **487 Certificates of NHS charges**

NOTE 14--SI 2006/3388 reg 2(1)(f) amended: SI 2009/316 (amended by SI 2009/834).

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#### **488. Information contained in certificates.**

A certificate<sup>1</sup> must specify the amount (or amounts) for which the person<sup>2</sup> to whom it is issued is liable<sup>3</sup>. The amount (or amounts) to be specified is (or are) to be that (or those) set out in, or determined in accordance with, regulations<sup>4</sup>, reduced<sup>5</sup> if applicable<sup>6</sup>. Such regulations may, in particular, provide: (1) that the amount, or the aggregate amount, specified in a certificate is not to exceed a prescribed sum<sup>7</sup>; (2) for different amounts to be specified in respect of different circumstances or areas<sup>8</sup>; (3) for cases in which an injured person receives treatment at two or more health service hospitals<sup>9</sup>; (4) for cases in which an injured person receives treatment at one or more health service hospitals and is provided with NHS ambulance services<sup>10</sup>; (5) for cases in which liability<sup>11</sup> is to be apportioned between two or more persons making compensation payments to or in respect of the same injured person in consequence of the same injury<sup>12</sup>; (6) for cases in which a fresh certificate is issued or a certificate is revoked as a result of a review<sup>13</sup> or an appeal<sup>14</sup>; (7) for the amount specified in a certificate issued by the Secretary of State or the Scottish Ministers to be adjusted to take into account any amount for which the person to whom the certificate is issued is liable<sup>15</sup>, in respect of the same injured person in consequence of the same injury, in accordance with a certificate issued by the Scottish Ministers or the Secretary of State (respectively)<sup>16</sup>; (8) for any matter requiring determination under or in consequence of the regulations to be determined by the Secretary of State or the Scottish Ministers (as the case may require)<sup>17</sup>.

Regulations may make provision as to the circumstances in which the amount (or amounts) specified in a certificate relating to a qualifying claim<sup>18</sup> is (or are) to be that (or those) which would be so specified apart from the regulations, reduced by the same proportion as the reduction of damages<sup>19</sup>.

If a certificate relates to an injured person who has not received NHS treatment<sup>20</sup> at a health service hospital or been provided with NHS ambulance services as a result of the injury, it must indicate that no amount is payable to the Secretary of State or the Scottish Ministers (as the case may be) by reference to that certificate<sup>21</sup>. A person to whom a certificate is issued is entitled to such particulars of the manner in which any amount (or amounts) specified in the certificate has (or have) been determined as may be prescribed, if he applies to the Secretary of State or the Scottish Ministers (as the case may require) for those particulars<sup>22</sup>. Where the Secretary of State issues a certificate to any person, he must at the same time send the person a notice as to the grounds on which the person may appeal against the certificate<sup>23</sup>.

1 As to certificates see PARA 487.

2 I.e. under the Health and Social Care (Community Health and Standards) Act 2003 s 150(2); see PARA 486. As to the meaning of 'person' see PARA 17 note 2.

3 Health and Social Care (Community Health and Standards) Act 2003 s 153(1).

4 The regulations may be made so as to apply to any certificate issued after the time the regulations come into force, other than one relating to a compensation payment made before that time: Health and Social Care (Community Health and Standards) Act 2003 s 153(12). As to the making of regulations see PARA 502. As to the meaning of 'compensation payment' see PARA 486 note 2. As to the regulations which have been made see the Personal Injuries (NHS Charges) (Amounts) Regulations 2007, SI 2007/115 (amended by SI 2008/252).

5 I.e. in accordance with the Health and Social Care (Community Health and Standards) Act 2003 s 153(3) (see note 6) or regulations under s 153(10) (see the text to note 19).

6 Health and Social Care (Community Health and Standards) Act 2003 s 153(2). If a certificate relates to a claim made by or on behalf of an injured person:

- 39 (1) in respect of which a court in England and Wales or Scotland has ordered a reduction of damages in accordance with the Law Reform (Contributory Negligence) Act 1945 s 1 (see **DAMAGES** vol 12(1) (Reissue) PARA 876; **NEGLIGENCE** vol 78 (2010) PARA 75) (Health and Social Care (Community Health and Standards) Act 2003 s 153(3)(a));
- 40 (2) in respect of which a court in Northern Ireland has ordered a reduction of damages in accordance with the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 s 2 (Health and Social Care (Community Health and Standards) Act 2003 s 153(3)(b));
- 41 (3) in respect of which a court in a country other than England and Wales, Scotland or Northern Ireland has ordered a reduction of damages under any provision of the law of that country which appears to the Secretary of State or the Scottish Ministers (as the case may be) to correspond to the Law Reform (Contributory Negligence) Act 1945 s 1 (Health and Social Care (Community Health and Standards) Act 2003 s 153(3)(c));
- 42 (4) in respect of which an officer of a court in England and Wales or Northern Ireland has entered or sealed an agreed judgment or order which specifies that the damages are to be reduced to reflect the injured person's share in the responsibility for the injury in question (s 153(3)(d)(i)), and the amount or proportion by which they are to be so reduced (s 153(3)(d)(ii));
- 43 (5) in the case of which the parties to any resulting action before a court in Scotland have executed a joint minute which specifies that the action has been settled extra-judicially (s 153(3)(e)(i)), and the matters mentioned in s 153(3)(d)(i) and (ii) (s 153(3)(e)(ii));
- 44 (6) in respect of which a document has been made under any provision of the law of a country other than England and Wales, Scotland or Northern Ireland which appears to the Secretary of State to correspond to an agreed judgment or order entered or sealed by an officer of a court in England and Wales (s 153(3)(f)(i)), and which specifies the matters mentioned in s 153(3)(d)(i) and (ii) (s 153(3)(f)(ii)); or
- 45 (7) in the case of which a document has been made under any provision of the law of a country other than England and Wales, Scotland or Northern Ireland which appears to the Scottish Ministers to correspond to a joint minute executed by the parties to a resulting action before a court in Scotland specifying that the action has been settled extra-judicially (s 153(3)(g)(i)), and which specifies the matters mentioned in s 153(d)(i) and (ii) (s 153(3)(g)(ii)),

the amount (or amounts) specified in the certificate is (or are) to be that (or those) which would be so specified apart from s 153(3), reduced by the same proportion as the reduction of damages (s 153(3)). As to the meaning of 'injured person' see PARA 486. As to the meaning of 'injury' see PARA 486 note 2. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the Secretary of State see PARA 6 note 8. As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 Health and Social Care (Community Health and Standards) Act 2003 s 153(5)(a). 'Prescribed' means prescribed by regulations: s 168. Any reference in s 153(5)(a) or (b) (see the text to note 8) to any amount (or amounts) specified in a certificate is to the amount (or amounts) which would be so specified apart from s 153(3) (see note 6) or regulations under s 153(10) (see the text to note 19): s 153(6).

8 Health and Social Care (Community Health and Standards) Act 2003 s 153(5)(b).

9 Health and Social Care (Community Health and Standards) Act 2003 s 153(5)(c). As to the meaning of 'health service hospital' see PARA 21 note 7: definition applied by s 168 (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 251(a)).

10 Health and Social Care (Community Health and Standards) Act 2003 s 153(5)(d). As to the meaning of 'NHS ambulance services' see PARA 486 note 7.

11 le under the Health and Social Care (Community Health and Standards) Act 2003 s 150(2): see PARA 486.

12 Health and Social Care (Community Health and Standards) Act 2003 s 153(5)(e). In the case of s 153(5)(e) the regulations may make such provision by modifying Pt 3 (ss 150-169): see s 153(5). Regulations which provide for cases mentioned in s 153(5)(e) may (among other things) provide in the case of each compensator for: (1) determining, or re-determining, the amount for which he is liable under s 150(2) (see PARA 486) (s 153(7)(a)); (2) giving credit for amounts already paid (s 153(7)(b)); and (3) the payment by any person of any balance or the recovery from any person of any excess (s 153(7)(c)).

13 le under or by virtue of the Health and Social Care (Community Health and Standards) Act 2003 s 156: see PARA 491.

14 Health and Social Care (Community Health and Standards) Act 2003 s 153(5)(f). An appeal is one under s 157 (see PARA 492) or 159 (see PARA 495). Regulations which provide for cases mentioned in s 153(5)(f) may (among other things) provide in the case of any compensator for the matters mentioned in s 153(7)(b) and (c) (see note 12): s 153(8).

15 le under the Health and Social Care (Community Health and Standards) Act 2003 s 150(2): see PARA 486.

16 Health and Social Care (Community Health and Standards) Act 2003 s 153(5)(g).

17 Health and Social Care (Community Health and Standards) Act 2003 s 153(5)(h).

18 A claim made by or on behalf of an injured person is a 'qualifying claim' if: (1) it does not fall within s 153(3) (see note 6) or within any other description of claim specified in regulations (s 153(9)(a) (s 153(9) substituted by the Health Act 2006 s 73)); and (2) it is settled, and the damages payable under the settlement are to be reduced to reflect the injured person's share in the responsibility for the injury in question (Health and Social Care (Community Health and Standards) Act 2003 s 153(9)(b) (as so substituted)).

19 Health and Social Care (Community Health and Standards) Act 2003 s 153(10). The circumstances in which the amount (or amounts) specified in a certificate relating to a qualifying claim are to be reduced in accordance with s 153(10) are where the applicant for the certificate sends to the Compensation Recovery Unit a report which contains the specified information and is signed by the parties to the agreement (Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 3(1)(a)), and it appears to the Secretary of State from that report that the agreement was reached in a fair manner (reg 3(1)(b)). For these purposes the specified information is as follows: (1) a statement that it was agreed by or on behalf of the injured person and the person who proposed to make a compensation payment that the damages payable under the settlement were to be reduced to reflect the injured person's share in the responsibility for the injury in question (reg 3(2)(a)); (2) a statement as to how that agreement was reached (reg 3(2)(b)); (3) the amount of damages payable under the settlement had there been no such agreement (reg 3(2)(c)); (4) the amount or proportion by which it was agreed that the damages were to be reduced (reg 3(2)(d)); and (5) the names of all those involved in the settlement process (reg 3(2)(e)). As to the meaning of 'Compensation Recovery Unit' see PARA 487 note 14.

20 As to the meaning of 'NHS treatment' see PARA 486 note 5.

21 Health and Social Care (Community Health and Standards) Act 2003 s 153(4).

22 Health and Social Care (Community Health and Standards) Act 2003 s 153(11). The particulars to which a person to whom a certificate is issued are entitled, in accordance with s 153(11), are: (1) in respect of NHS ambulance services counted for the purposes of determining any amount in the certificate, the name of the ambulance trust which provided those services, the date on which the services were provided, and the name and address of any hospital to which the injured person was taken (Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 4(a)); and (2) in respect of NHS treatment counted for the purposes of determining any amount in the certificate, the name and address of the responsible body of any hospital at which that treatment took place, and whether the injured person was admitted to any hospital and if so, the number of days of admission counted at each hospital (reg 4(b)). 'Hospital' means a health service hospital within the meaning of the National Health Service Act 2006 (see PARA 21 note 7): Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 1(3); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

23 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 3(a). The notice must also set out the requirements under the Health and Social Care (Community Health and Standards) Act 2003 s 157(2) (see PARA 492) that are to be satisfied before an appeal may be made (Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 3(b)); and the person's right under the Health and Social Care (Community Health and Standards) Act 2003 s 157(4) (see PARA 492) to apply for the requirement in s 157(2)(b) (payment of amounts specified in certificate) to be waived (Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 3(c)).

## UPDATE

### 488 Information contained in certificates

NOTE 4--SI 2007/115 further amended: SI 2009/316 (amended by SI 2009/834).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/489. Payment of NHS charges.

#### **489. Payment of NHS charges.**

If the certificate<sup>1</sup> by reference to which an amount payable<sup>2</sup> is determined is issued before the settlement date<sup>3</sup>, that amount must be paid before the end of the period of 14 days beginning with the settlement date<sup>4</sup>. If the certificate by reference to which an amount payable is determined is issued on or after the settlement date, that amount must be paid before the end of the period of 14 days beginning with the day on which the certificate is issued<sup>5</sup>.

1 As to certificates see PARA 487.

2 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 150(2); see PARA 486.

3 'Settlement date' means the date on which the compensation payment is made: Health and Social Care (Community Health and Standards) Act 2003 s 154(3). As to the meaning of 'compensation payment' see PARA 486 note 2.

4 Health and Social Care (Community Health and Standards) Act 2003 s 154(1). Section 154 is subject to s 155(2) (see PARA 490): s 154(4). As to the recovery of NHS charges see PARA 490.

5 Health and Social Care (Community Health and Standards) Act 2003 s 154(2). See also note 4.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/490. Recovery of NHS charges.

#### **490. Recovery of NHS charges.**

If a person<sup>1</sup> has made a compensation payment<sup>2</sup> and either: (1) in specified circumstances<sup>3</sup>, at the time the payment is made he has not applied for a certificate<sup>4</sup> as required<sup>5</sup>; or (2) he has not made payment in full of any amount due<sup>6</sup> by the end of the period allowed<sup>7</sup>, the Secretary of State<sup>8</sup>, the Scottish Ministers<sup>9</sup> or both, according to the circumstances of the case, may in a case within head (1) above issue the person who made the compensation payment with a certificate<sup>10</sup>, and in a case within head (2) above issue him with a copy of the certificate or (if more than one has been issued) the most recent one<sup>11</sup>. In either case they may also issue him with a demand that payment of any amount due<sup>12</sup> be made immediately<sup>13</sup>.

The Secretary of State or the Scottish Ministers may recover the amount for which such a demand for payment is made from the person who made the compensation payment<sup>14</sup>. If the person who made the compensation payment resides<sup>15</sup> or carries on business in England or Wales<sup>16</sup> and a county court so orders, the amount demanded is recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court<sup>17</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the meaning of 'compensation payment' see PARA 486 note 2.

3 In circumstances in which the Health and Social Care (Community Health and Standards) Act 2003 s 151(7) applies: see PARA 487.

4 As required by the Health and Social Care (Community Health and Standards) Act 2003 s 151(7): see PARA 487.

5 Health and Social Care (Community Health and Standards) Act 2003 s 155(1)(a).

6 As under the Health and Social Care (Community Health and Standards) Act 2003 s 150(2): see PARA 486.

7 Health and Social Care (Community Health and Standards) Act 2003 s 155(1)(b). The period allowed is that allowed under s 154: see PARA 489.

8 As to the Secretary of State see PARA 6 note 8.

9 As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

10 Health and Social Care (Community Health and Standards) Act 2003 s 155(2)(a). The provisions of s 152(5), (6) (see PARA 487) apply to certificates issued under s 155(2) as they apply to certificates issued under s 151: s 155(3).

11 Health and Social Care (Community Health and Standards) Act 2003 s 155(2)(b). See also note 10.

12 As under the Health and Social Care (Community Health and Standards) Act 2003 s 150(2): see PARA 486.

13 Health and Social Care (Community Health and Standards) Act 2003 s 155(2). A demand issued under s 155(2) may be issued jointly by the Secretary of State and the Scottish Ministers specifying an amount due under s 150(2) to the Secretary of State (s 155(4)(a)), and an amount due thereunder to the Scottish Ministers (s 155(4)(b)), in respect of the same injured person in consequence of the same injury (s 155(4)). As to the meaning of 'injured person' see PARA 486. As to the meaning of 'injury' see PARA 486 note 2. In the case of a demand specifying amounts as mentioned in s 155(4)(a) and (b), references in s 155(6)-(10) (see the text to notes 14-17) to a demand are to be taken as being (as the case may require) to the demand in so far as it relates to any amount due to the Secretary of State (s 155(5)(a)), or the demand in so far as it relates to any amount due to the Scottish Ministers (s 155(5)(b)), and related expressions are to be read accordingly (s 155(5)).

14 Health and Social Care (Community Health and Standards) Act 2003 s 155(6). See also note 13. A document which states that it is a record of the amount recoverable under s 155(6) is conclusive evidence that the amount is so recoverable if it is signed by a person authorised to do so by the Secretary of State or the Scottish Ministers (as the case may be): s 155(9). For these purposes, a document purporting to be signed by a person authorised to do so by the Secretary of State or the Scottish Ministers (as the case may be) is to be treated as so signed unless the contrary is proved: s 155(10).

15 As to residence see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 57 et seq.

16 As to the meanings of 'England' and 'Wales' see para 6 note 2.

17 Health and Social Care (Community Health and Standards) Act 2003 s 155(7). Similar provision is made where the person who made the compensation payment resides or carries on business in Scotland: see s 155(8). As from a day to be appointed s 155(7) is amended to read: If the person who made the compensation payment resides or carries on business in England or Wales and a county court so orders, the amount demanded is recoverable under the County Courts Act 1984 s 85 (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1283) or otherwise as if it were payable under an order of that court: Health and Social Care (Community Health and Standards) Act 2003 s 155(7) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 s 62(3), Sch 13 para 152). At the date at which this volume states the law no such day had been appointed. As to county courts see **COURTS** vol 10 (Reissue) PARA 701 et seq.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/491. Review of certificates.

#### 491. Review of certificates.

The Secretary of State<sup>1</sup> or the Scottish Ministers<sup>2</sup> must review a certificate<sup>3</sup> issued by him or them if the certificate relates to a claim made by or on behalf of an injured person<sup>4</sup> in respect of which a reduction of damages has been ordered or agreed<sup>5</sup>, and notification of the order, judgment, minute or document relating to that order or agreement has been given to the Secretary of State or the Scottish Ministers (as the case may be) in the prescribed manner<sup>6</sup>. Regulations may make provision as to the circumstances in which the Secretary of State or the Scottish Ministers must review a certificate relating to a claim which, after the certificate is issued, becomes a qualifying claim<sup>7</sup>. The Secretary of State or the Scottish Ministers may review a certificate issued by him or them either within the prescribed period or in prescribed cases or circumstances<sup>8</sup>, and either on application made for the purpose or on his or their initiative<sup>9</sup>.

On a review under or by virtue of these provisions, the Secretary of State or the Scottish Ministers may: (1) confirm the certificate<sup>10</sup>; (2) issue a fresh certificate containing such variations as he considers or they consider appropriate<sup>11</sup>; or (3) revoke the certificate<sup>12</sup>. If the Secretary of State and the Scottish Ministers have issued certificates to a person specifying an amount (or amounts) for which that person is liable<sup>13</sup> in respect of the same injured person in consequence of the same injury<sup>14</sup>, and either the Secretary of State or the Scottish Ministers subsequently adjusts or adjust the amount (or amounts) specified in the certificate issued by him or them on a review of, or an appeal against, that certificate<sup>15</sup>, the other must review the certificate issued by him or them (as the case may be) if he is or they are satisfied that it is necessary or expedient to make consequential adjustments to that certificate<sup>16</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

3 As to certificates see PARA 487.

4 As to the meaning of 'injured person' see PARA 486.

5 I.e a claim: (1) in respect of which, after the certificate is issued, a court in England and Wales or Scotland orders a reduction of damages in accordance with the Law Reform (Contributory Negligence) Act 1945 s 1 (see **DAMAGES** vol 12(1) (Reissue) PARA 876; **NEGLIGENCE** vol 78 (2010) PARA 75) (Health and Social Care (Community Health and Standards) Act 2003 s 156(1)(a)); (2) in respect of which, after the certificate is issued, a court in Northern Ireland orders a reduction of damages in accordance with the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 s 2 (Health and Social Care (Community Health and Standards) Act 2003 s 156(1)(b)); (3) in respect of which, after the certificate is issued, a court in a country other than England and Wales, Scotland or Northern Ireland orders a reduction of damages under any provision of the law of that country which appears to the Secretary of State or the Scottish Ministers (as the case may be) to correspond to the Law Reform (Contributory Negligence) Act 1945 s 1 (Health and Social Care (Community Health and Standards) Act 2003 s 156(1)(c)); (4) in respect of which, after the certificate is issued, an officer of a court in England and Wales or Northern Ireland enters or seals an agreed judgment or order which specifies that the damages are to be reduced to reflect the injured person's share in the responsibility for the injury in question (s 156(1)(d)(i)), and the amount or proportion by which they are to be so reduced (s 156(1)(d)(ii)); (5) in the case of which, after the certificate is issued, the parties to any resulting action before a court in Scotland execute a joint minute which specifies that the action has been settled extra-judicially (s 156(1)(e)(i)), and the matters mentioned in s 156(1)(d)(i) and (ii) (s 156(1)(e)(ii)); (6) in respect of which, after the certificate is issued, a document is made under any provision of the law of a country other than England and Wales, Scotland or Northern Ireland which appears to the Secretary of State to correspond to an agreed judgment or order entered or sealed by an officer of a court in England and Wales (s 156(1)(f)(i)), and which specifies the matters mentioned in s 156(d)(i) and (ii) (s 156(1)(f)(ii)); or (7) in the case of which, after the certificate is issued, a document is made under any

provision of the law of a country other than England and Wales, Scotland or Northern Ireland which appears to the Scottish Ministers to correspond to a joint minute executed by the parties to a resulting action before a court in Scotland specifying that the action has been settled extra-judicially (s 156(1)(g)(i)), and which specifies the matters mentioned in s 156(d)(i) and (ii) (s 156(1)(g)(ii)). As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the meaning of 'injury' see PARA 486 note 2.

6 Health and Social Care (Community Health and Standards) Act 2003 s 156(1). 'Prescribed' means prescribed by regulations: s 168. As to the making of regulations see PARA 502. For these purposes, notification of an order, judgment, minute or document is to be given to the Secretary of State by the compensator sending to the Compensation Recovery Unit a copy of the order, judgment, minute or document concerned (Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 2(1)(a)); and particulars of the proportion by which the damages payable in respect of the claim are to be reduced to reflect the injured person's share in the responsibility for the injury in question (reg 2(1)(b)). 'Compensator' means a person to whom a certificate has been issued: reg 1(3). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'Compensation Recovery Unit' see PARA 487 note 14.

7 Health and Social Care (Community Health and Standards) Act 2003 s 156(2). As to the meaning of 'qualifying claim' see PARA 488 note 18. The Secretary of State must review a certificate relating to a claim which, after the certificate is issued, becomes a qualifying claim if, not later than three months after the claim becomes a qualifying claim, the report containing the information required by the Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 3(1)(a) (see PARA 488 note 19) is sent by the compensator to the Compensation Recovery Unit: Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 2(2). As to the meaning of 'month' see PARA 28 note 16.

8 Health and Social Care (Community Health and Standards) Act 2003 s 156(4)(a).

9 Health and Social Care (Community Health and Standards) Act 2003 s 156(4)(b). The Secretary of State may review a certificate where he is satisfied that: (1) a mistake (whether in computation of the amount specified or otherwise) may have occurred in the preparation of the certificate (Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 2(3)(a)); (2) the amount specified in the certificate may be in excess of the amount due to the Secretary of State (reg 2(3)(b)); (3) incorrect or insufficient information may have been supplied to the Secretary of State by the person to whom the certificate was issued and, in consequence, the amount specified in the certificate was less than it would have been had the information supplied been correct or sufficient (reg 2(3)(c)); or (4) a ground for an appeal against a certificate may be satisfied (reg 2(3)(d)). An application for a review must be in writing on a form approved by the Secretary of State and sent to the Compensation Recovery Unit not later than three months after the date on the certificate (reg 2(4)(a)); or if later, the date on which the compensation payment was made (reg 2(4)(b)). 'Appeal against a certificate' means an appeal, under the Health and Social Care (Community Health and Standards) Act 2003 s 157(1) (see PARA 492), against a certificate: reg 1(3). As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'compensation payment' see PARA 486 note 2.

10 Health and Social Care (Community Health and Standards) Act 2003 s 156(5)(a).

11 Health and Social Care (Community Health and Standards) Act 2003 s 156(5)(b). But the Secretary of State or the Scottish Ministers may not vary a certificate so as to increase the amount, or the aggregate amount, specified unless it appears to him or them that the variation is required as a result of his or their having been supplied with incorrect or insufficient information by the person to whom the certificate is issued: s 156(6). The provisions of s 152(5), (6) (see PARA 487) apply to certificates issued under s 156(5)(b) above as they apply to certificates issued under s 151: s 156(7).

12 Health and Social Care (Community Health and Standards) Act 2003 s 156(5)(c).

13 le under the Health and Social Care (Community Health and Standards) Act 2003 s 150(2): see PARA 486.

14 Health and Social Care (Community Health and Standards) Act 2003 s 156(3)(a).

15 Health and Social Care (Community Health and Standards) Act 2003 s 156(3)(b).

16 Health and Social Care (Community Health and Standards) Act 2003 s 156(3).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/492. Appeal against a certificate or a waiver decision.

#### **492. Appeal against a certificate or a waiver decision.**

An appeal against a certificate<sup>1</sup> may be made by the person<sup>2</sup> to whom the certificate was issued on one or more of the following grounds:

- 323 (1) that an amount (or amounts) specified in the certificate is (or are) incorrect<sup>3</sup>;
- 324 (2) that an amount (or amounts) so specified takes (or take) into account: (a) treatment which is not NHS treatment<sup>4</sup> received by the injured person<sup>5</sup>, as a result of his injury<sup>6</sup>, at a health service hospital<sup>7</sup>; (b) ambulance services which are not NHS ambulance services<sup>8</sup> provided to the injured person as a result of his injury<sup>9</sup>; or (c) treatment as mentioned in head (a) above and ambulance services as mentioned in head (b) above<sup>10</sup>;
- 325 (3) that the payment on the basis of which the certificate was issued is not a compensation payment<sup>11</sup>.

No appeal may be made until the claim against the person to whom the certificate was issued, which gives rise to the compensation payment, has been finally disposed of<sup>12</sup>, and payment of the amount (or amounts) specified in the certificate has been made to the Secretary of State<sup>13</sup> or the Scottish Ministers<sup>14</sup> (as the case may be)<sup>15</sup>. The Secretary of State or the Scottish Ministers may, on an application by the person to whom the certificate was issued<sup>16</sup>, waive the requirement<sup>17</sup> that payment of the amount (or amounts) specified in the certificate be made before making an appeal<sup>18</sup>. An appeal against a waiver decision may be made by the person to whom the certificate was issued<sup>19</sup>.

Regulations<sup>20</sup> may make provision: (i) as to the manner in which, and the time within which, an appeal against a certificate or waiver decision may be made<sup>21</sup>; (ii) as to the procedure to be followed if an appeal against a certificate or waiver decision is made<sup>22</sup>; (iii) as to the circumstances in which appeals may be consolidated (including the consolidation of an appeal against a certificate issued by the Secretary of State with an appeal against a certificate issued by the Scottish Ministers)<sup>23</sup>; and (iv) for the purpose of enabling an appeal against a certificate to be treated as an application<sup>24</sup> for a review<sup>25</sup>.

1 As to certificates see PARA 487. As to reviews of certificates see PARA 491.

2 As to the meaning of 'person' see PARA 17 note 2.

3 Health and Social Care (Community Health and Standards) Act 2003 s 157(1)(a).

4 As to the meaning of 'NHS treatment' see PARA 486 note 5.

5 As to the meaning of 'injured person' see PARA 486.

6 As to the meaning of 'injury' see PARA 486 note 2.

7 Health and Social Care (Community Health and Standards) Act 2003 s 157(1)(b)(i). As to the meaning of 'health service hospital' see PARA 21 note 7: definition applied by s 168 (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 251(a)).

8 As to the meaning of 'NHS ambulance services' see PARA 486 note 7.

9 Health and Social Care (Community Health and Standards) Act 2003 s 157(1)(b)(ii).

- 10 Health and Social Care (Community Health and Standards) Act 2003 s 157(1)(b)(iii).
- 11 Health and Social Care (Community Health and Standards) Act 2003 s 157(1)(c). As to the meaning of 'compensation payment' see PARA 486 note 2.
- 12 Health and Social Care (Community Health and Standards) Act 2003 s 157(2)(a). For these purposes, if an award of damages in respect of a claim has been made under or by virtue of the Supreme Court Act 1981 s 32A(2)(a) (see **DAMAGES** vol 12(1) (Reissue) PARA 930), the Administration of Justice Act 1982 s 12(2)(a) or Sch 6 para 10(2)(a) (provisions relating to Scotland and Northern Ireland), or the County Courts Act 1984 s 51(2)(a) (see **DAMAGES** vol 12(1) (Reissue) PARA 930), the claim is to be treated as having been finally disposed of: Health and Social Care (Community Health and Standards) Act 2003 s 157(3). As from a day to be appointed s 157(3) is amended so that the reference to the Supreme Court Act 1981 s 32A(2)(a) is replaced by a reference to the Senior Courts Act 1981 s 32A(2)(a): Health and Social Care (Community Health and Standards) Act 2003 s 157(3) (prospectively amended by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 para 1(2)).
- 13 As to the Secretary of State see PARA 6 note 8.
- 14 As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 15 Health and Social Care (Community Health and Standards) Act 2003 s 157(2)(b). This provision is expressed to be subject to s 157(4) (see the text to notes 16-18), s 158(6) (see PARA 494) and s 159(5) (see PARA 495).
- 16 An application for a waiver (a 'waiver application') must be sent to the Compensation Recovery Unit with particulars of the exceptional financial hardship that would be caused by payment of the amount (or amounts) specified in the certificate: Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 4(1). A waiver application must be sent to the Compensation Recovery Unit not later than three months after the date on the certificate, or if later, the date on which the compensation payment was made (reg 4(2)(a)); or if the compensator has been granted an extension of the time limit for an appeal against a certificate under reg 7 (see PARA 493), one month after the date of that decision (reg 4(2)(b)). As to the meaning of 'Compensation Recovery Unit' see PARA 487 note 14. As to the meaning of 'month' see PARA 28 note 16.
- 17 Is the requirement in the Health and Social Care (Community Health and Standards) Act 2003 s 157(2)(b): see the text to notes 13-15.
- 18 Health and Social Care (Community Health and Standards) Act 2003 s 157(4). Such a decision is known as a 'waiver decision': see s 157(6). The Secretary of State or the Scottish Ministers may only grant a waiver if it appears to him or them that payment of the amount (or amounts) specified in the certificate would cause exceptional financial hardship: s 157(5). Where the Secretary of State makes a waiver decision, the person who made the waiver application must be given notice of the decision (Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 4(3)(a)); and if the waiver application is refused given notice of his right of appeal against the decision and informed that, if the notice of the decision does not include a statement of the reasons for the decision, he may, within one month of the date of notification of that decision, request that the Secretary of State provide him with a written statement of the reasons for the decision (reg 4(3)(b)).
- 19 Health and Social Care (Community Health and Standards) Act 2003 s 157(6). As to applications for appeals see PARA 493.
- 20 As to the making of regulations see PARA 502. As to the regulations made see notes 16, 18 and PARA 493.
- 21 Health and Social Care (Community Health and Standards) Act 2003 s 157(7)(a).
- 22 Health and Social Care (Community Health and Standards) Act 2003 s 157(7)(b).
- 23 Health and Social Care (Community Health and Standards) Act 2003 s 157(7)(c).
- 24 Is under the Health and Social Care (Community Health and Standards) Act 2003 s 156: see PARA 491.
- 25 Health and Social Care (Community Health and Standards) Act 2003 s 157(7)(d).

## UPDATE

### 492 Appeal against a certificate or a waiver decision

NOTE 12--Appointed day is 1 October 2009: SI 2009/1604.

TEXT AND NOTES 19, 23--Health and Social Care (Community Health and Standards) Act 2003 s 157(6) amended, s 157(7)(c) repealed: SI 2008/2833.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/493. Applications for appeals.

### **493. Applications for appeals.**

An appeal against a waiver decision<sup>1</sup> must be in writing<sup>2</sup> on a form approved by the Secretary of State<sup>3</sup> and, unless an application has been granted to extend the time for an appeal<sup>4</sup>, must be sent to the Compensation Recovery Unit<sup>5</sup> not later than one month<sup>6</sup> after the date of the waiver decision<sup>7</sup>.

Any appeal against a certificate<sup>8</sup> must be in writing on a form approved by the Secretary of State and, unless an application has been granted to extend the time for an appeal<sup>9</sup>, must be sent to the Compensation Recovery Unit: (1) not later than three months after the date on the certificate<sup>10</sup> or, if later, the date on which the compensation payment is made<sup>11</sup>; (2) where a certificate is confirmed following a review by the Secretary of State<sup>12</sup>, not later than three months after the date of that confirmation<sup>13</sup>; (3) where an agreement is made under which an earlier compensation payment<sup>14</sup> is treated as having been made in final discharge of a claim made by or in respect of an injured person<sup>15</sup> and arising out of the injury<sup>16</sup> or death, not later than three months after the date of that agreement<sup>17</sup>; or (4) where the compensator<sup>18</sup> makes a waiver application<sup>19</sup>, not later than one month after the date of the waiver decision<sup>20</sup> or, if the compensator appeals against that decision, the date on which the appeal is decided or withdrawn<sup>21</sup>.

Where the points raised in an appeal against a certificate have not already been the subject of a review<sup>22</sup> the Secretary of State, if he thinks it appropriate to do so, may treat an appeal against a certificate as an application<sup>23</sup> for review<sup>24</sup>.

Any appeal must contain the prescribed particulars<sup>25</sup>. Where an appeal is not made on the form approved for the time being, but is made in writing and contains all the particulars required<sup>26</sup> the Secretary of State may treat that appeal as duly made<sup>27</sup>. Where it appears to the Secretary of State that an appeal does not contain all the particulars so required he may require the person making the appeal to provide such particulars as are not included<sup>28</sup>. The time prescribed<sup>29</sup> for the making of an appeal may be extended, even though the time so prescribed may already have expired, on application by the compensator<sup>30</sup>. No appeal may be brought later than one year after the beginning of the prescribed period<sup>31</sup> or, if more than one such period is relevant, the one beginning later or latest<sup>32</sup>.

1 As to appeals against waiver decisions see PARA 492. As to the meaning of 'waiver decision' see PARA 492 note 18.

2 As to the meaning of 'writing' see PARA 7 note 2.

3 As to the Secretary of State see PARA 6 note 8.

4 Ie under the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 7: see the text to notes 29-30.

5 As to the meaning of 'Compensation Recovery Unit' see PARA 487 note 14.

6 As to the meaning of 'month' see PARA 28 note 16.

7 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 4(4). An appeal against a waiver decision must contain the particulars required under reg 5(4) (see note 25) in relation to the appeal against the certificate



which it is proposed to bring (reg 4(5)(a)); and particulars of the exceptional financial hardship that would be caused by payment of the amount (or amounts) specified in the certificate (reg 4(5)(b)).

8 Where two or more appeals against certificates (whether issued by the Secretary of State or Scottish Ministers) relate to the same injury, the legally qualified panel member may direct that the appeals be consolidated: Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 9. As to the meaning of 'injury' see PARA 486 note 2. 'Legally qualified panel member' means a panel member who has a general qualification (construed in accordance with the Courts and Legal Services Act 1990 s 71: see **LEGAL PROFESSIONS** vol 65 (2008) PARA 742)) or is an advocate or solicitor in Scotland: see the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 1(3); Social Security and Child Support (Decisions and Appeals) Regulations 1999, SI 1999/99, reg 1(3), Sch 3 para 1. As to appeals against certificates see PARA 492. As to certificates see PARA 487. As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 Ie under the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 7: see the text to notes 29-30.

10 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 5(1)(a)(i).

11 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 5(1)(a)(ii).

12 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 156: see PARA 491.

13 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 5(1)(b).

14 As to the meaning of 'compensation payment' see PARA 486 note 2.

15 As to the meaning of 'injured person' see PARA 486.

16 As to the meaning of 'injury' see PARA 486 note 2.

17 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 5(1)(c).

18 As to the meaning of 'compensator' see PARA 491 note 6.

19 As to waiver applications see PARA 492 note 16.

20 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 5(1)(d)(i).

21 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 5(1)(d)(ii).

22 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 156: see PARA 491.

23 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 156(4): see PARA 491.

24 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 5(2). Where the Secretary of State decides to treat an appeal against a certificate as an application for review he must advise the applicant that he has done so and, where the certificate is confirmed, notify the applicant of that decision (reg 5(3)(a)); or otherwise issue a fresh certificate (reg 5(3)(b)).

25 The prescribed particulars are: the date of the certificate in relation to which the appeal is made (Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 5(4)(a)); the ground under the Health and Social Care (Community Health and Standards) Act 2003 s 157 (see PARA 492) to which the appeal relates (Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 5(4)(b)); and a summary of the arguments relied on by the person making the appeal to support his contention that the certificate is wrong (reg 5(4)(c)).

26 lie under the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 4(5) (see note 7) or reg 5(4) (see note 25).

27 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 6(1) (reg 6(1)-(5) amended by SI 2007/1613).

28 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 6(2) (as amended: see note 27). Where reg 6(2) applies, the Secretary of State may extend the time specified by reg 4(4) (see the text to notes 1-7) or reg 5(1) (see the text to notes 8-21), as the case may be, for making the appeal by a period of not more than 14 days: reg 6(3) (as so amended). Where further particulars are required under reg 6(2), they must be sent to the Compensation Recovery Unit within such a period as the Secretary of State may direct: reg 6(4) (as so amended). Where a person is required under reg 6(2) to provide further particulars and does not do so within the period of time specified under reg 6(4) the Secretary of State must send a copy of the appeal together with any other relevant documents, to a legally qualified panel member (reg 6(5)(a) (as so amended)), and that panel member must determine whether the appeal is to be treated as duly made, and must inform the appellant, and the Secretary of State of his decision (reg 6(5)(b) (as so amended)). The date of an appeal is: (1) the date on which all the particulars required under reg 4(5) (see note 7) or reg 5(4) (see note 25), as the case may be, are received by the Compensation Recovery Unit (reg 6(6)(a)); or (2) where a legally qualified panel member determines under reg 6(5)(b) that the appeal is to be treated as duly made, the date on which the appeal was received by the Compensation Recovery Unit (reg 6(6)(b)).

29 lie by the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, regs 4 and 5: see the text to notes 6, 10-21.

30 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 7(1). Any application for an extension of time must be sent to the Compensation Recovery Unit: reg 7(2). As to the content and the determination of such applications see reg 7(2)-(10). An application for extension which has been refused may not be renewed: reg 7(11).

31 lie the period prescribed in the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 4(2) (see PARA 492 note 16) or reg 5(1) (see the text to notes 8-21).

32 Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 7(12).

## **UPDATE**

### **493 Applications for appeals**

TEXT AND NOTES--SI 2006/3398 regs 1(3), 6(1)-(3), (5), 7(4)-(6) amended, regs 4(4), 5(1), 7(1)-(3), (9) substituted, regs 4(5), 5(4), 6(6), 7(7), (8), (10)-(12), 9 revoked: SI 2008/2683.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/494. Appeal tribunals.

#### **494. Appeal tribunals.**

The Secretary of State<sup>1</sup> or the Scottish Ministers<sup>2</sup> must refer to an appeal tribunal<sup>3</sup> an appeal<sup>4</sup> against a certificate<sup>5</sup>, or a waiver decision<sup>6</sup>.

In determining an appeal against a certificate, the tribunal must take into account any decision of a court relating to the same, or any similar, issue arising in connection with the injury<sup>7</sup> in question<sup>8</sup>. On an appeal against a certificate, the tribunal may: (1) confirm the amount or amounts specified in the certificate<sup>9</sup>; (2) specify any variations which are to be made on the issue<sup>10</sup> of a fresh certificate<sup>11</sup>; or (3) declare that the certificate is to be revoked<sup>12</sup>. When the Secretary of State or the Scottish Ministers (as the case may be) has or have received the decision of the tribunal on an appeal against a certificate, he or they must in accordance with that decision confirm the certificate<sup>13</sup>, issue a fresh certificate<sup>14</sup>, or revoke the certificate<sup>15</sup>.

On an appeal against a waiver decision, the tribunal may confirm the decision<sup>16</sup>, or waive the requirement in question<sup>17</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

3 The appeal tribunal must be constituted under the Social Security Act 1998 Pt 1 Ch 1 (ss 1-7) (see **SOCIAL SECURITY AND PENSIONS**): see the Health and Social Care (Community Health and Standards) Act 2003 s 158(1). Regulations under s 157 (see PARA 492) may (among other things) provide for the non-disclosure of medical advice or medical evidence given or submitted following a reference under s 158(1): s 158(7). The Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, make provision for specified provisions of the Social Security and Child Support (Decisions and Appeals) Regulations 1999, SI 1999/99, to apply, with modifications, in relation to the appeal as they apply to an appeal to an appeal tribunal under the Social Security Act 1998 s 12 (see **SOCIAL SECURITY AND PENSIONS**): see the Personal Injuries (NHS Charges) (Reviews and Appeals) and Road Traffic (NHS Charges) (Reviews and Appeals) (Amendment) Regulations 2006, SI 2006/3398, reg 8.

4 As to appeals see PARA 492. As to applications for appeals see PARA 493.

5 Health and Social Care (Community Health and Standards) Act 2003 s 158(1)(a). As to certificates see PARA 487.

6 Health and Social Care (Community Health and Standards) Act 2003 s 158(1)(b). As to the meaning of 'waiver decision' see PARA 492 note 18.

7 As to the meaning of 'injury' see PARA 486 note 2.

8 Health and Social Care (Community Health and Standards) Act 2003 s 158(2).

9 Health and Social Care (Community Health and Standards) Act 2003 s 158(3)(a). As to appeals against decisions of the tribunal see PARA 495.

10 *Ie* under the Health and Social Care (Community Health and Standards) Act 2003 s 158(4): see the text to note 14.

11 Health and Social Care (Community Health and Standards) Act 2003 s 158(3)(b).

12 Health and Social Care (Community Health and Standards) Act 2003 s 158(3)(c).

13 Health and Social Care (Community Health and Standards) Act 2003 s 158(4)(a).

14 Health and Social Care (Community Health and Standards) Act 2003 s 158(4)(b). The provisions of s 152(5), (6) (see PARA 487) apply to certificates issued under s 158(4)(b) above as they apply to certificates issued under s 151 (see PARA 487): s 158(5).

15 Health and Social Care (Community Health and Standards) Act 2003 s 158(4)(c).

16 Health and Social Care (Community Health and Standards) Act 2003 s 158(6)(a).

17 Health and Social Care (Community Health and Standards) Act 2003 s 158(6)(b).

## **UPDATE**

### **494 Appeal tribunals**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 158(1), (4) amended: SI 2008/2833. SI 2006/3398 reg 8 substituted: SI 2008/2683. The functions of the appeal tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 13A).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/495. Appeal to social security commissioner.

#### **495. Appeal to social security commissioner.**

An appeal may be made to a commissioner<sup>1</sup> against any decision of an appeal tribunal<sup>2</sup> on the ground that the decision was erroneous in point of law<sup>3</sup>. An appeal may be made by the Secretary of State<sup>4</sup> or the Scottish Ministers<sup>5</sup> (as the case may be)<sup>6</sup>, or the person<sup>7</sup> to whom the certificate<sup>8</sup> was issued<sup>9</sup>.

1 'Commissioner' means the chief social security commissioner or any other social security commissioner, and includes a tribunal of three or more commissioners constituted under the Social Security Act 1998 s 16(7) (see **SOCIAL SECURITY AND PENSIONS**): s 39(1); definition applied by the Health and Social Care (Community Health and Standards) Act 2003 s 159(7). As to the social security commissioners see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 362.

2 See under the Health and Social Care (Community Health and Standards) Act 2003 s 158: see PARA 494.

3 Health and Social Care (Community Health and Standards) Act 2003 s 159(1). If an appeal is made under s 159, the provisions of the Social Security Act 1998 s 14(7)-(12) (see **SOCIAL SECURITY AND PENSIONS**) apply to the appeal as they apply to an appeal under that section (reading references to a tribunal as references to an appeal tribunal constituted as mentioned in the Health and Social Care (Community Health and Standards) Act 2003 s 158(1) (see PARA 494)): s 159(3). In a case in which the Social Security Act 1998 s 14(7) or (8)(b) applies by virtue of the Health and Social Care (Community Health and Standards) Act 2003 s 159(3) to an appeal against a decision of an appeal tribunal under s 158(3) (see PARA 494), the provisions of s 158(2)-(4) (see PARA 494) apply as they apply to an appeal determined on a reference under s 158(1)(a): s 159(4). In a case in which the Social Security Act 1998 s 14(7) or (8)(b) applies by virtue of the Health and Social Care (Community Health and Standards) Act 2003 s 159(3) to an appeal against a decision of an appeal tribunal under s 158(6) (see PARA 494), the appeal tribunal may confirm the waiver decision (s 159(5)(a)), or waive the requirement in question (s 159(5)(b)). In a case in which the Social Security Act 1998 s 14(8)(a) applies by virtue of the Health and Social Care (Community Health and Standards) Act 2003 s 159(3) to an appeal against a decision of an appeal tribunal under s 158(3), s 158(4) applies as if the references to the decision of the tribunal on an appeal against a certificate were references to the decision of the commissioner on an appeal under s 159: s 159(6).

4 As to the Secretary of State see PARA 6 note 8.

5 As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 Health and Social Care (Community Health and Standards) Act 2003 s 159(2)(a).

7 As to the meaning of 'person' see PARA 17 note 2.

8 As to certificates see PARA 487.

9 Health and Social Care (Community Health and Standards) Act 2003 s 159(2)(b).

#### **UPDATE**

#### **495 Appeal to social security commissioner**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 159 repealed: SI 2008/2833. The functions of the appeal tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 13A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/496. Provision of information.

#### **496. Provision of information.**

If compensation is sought in consequence of any injury<sup>1</sup> suffered by an injured person<sup>2</sup>, such information with respect to the circumstances of the case as may be prescribed<sup>3</sup> must be given by the following persons<sup>4</sup> to the Secretary of State<sup>5</sup> or the Scottish Ministers<sup>6</sup> (as the case may require)<sup>7</sup>: (1) the person against whom the claim is made and anyone acting on behalf of that person, whether or not proceedings have been commenced<sup>8</sup>; (2) the injured person or, if the injured person has died, his personal representative<sup>9</sup>; (3) anyone not within head (1) above who is, or is alleged to be, liable to any extent in respect of the injury<sup>10</sup>; (4) if the claim is not made by the injured person, the person by whom it is made<sup>11</sup>; (5) anyone acting on behalf of the person within any of heads (2) to (4) above<sup>12</sup>; (6) the responsible body<sup>13</sup> of each health service hospital at which the injured person has received NHS treatment<sup>14</sup> as a result of his injury<sup>15</sup>; (7) any ambulance trust<sup>16</sup> which provided NHS ambulance services<sup>17</sup> as a result of his injury<sup>18</sup>.

A person who is so required to give information must do so in the prescribed manner<sup>19</sup>, and within the prescribed period<sup>20</sup>. Regulations may, in particular, require the provision of information about any NHS treatment which an injured person has received at a health service hospital and any NHS ambulance services provided to the injured person<sup>21</sup>.

1 As to the meaning of 'injury' see PARA 486 note 2.

2 As to the meaning of 'injured person' see PARA 486.

3 'Prescribed' means prescribed by regulations: Health and Social Care (Community Health and Standards) Act 2003 s 168. As to the making of regulations see PARA 502. As to the regulations made see the Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 5.

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the Secretary of State see PARA 6 note 8.

6 As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 Health and Social Care (Community Health and Standards) Act 2003 s 160(1).

8 Health and Social Care (Community Health and Standards) Act 2003 s 160(1)(a).

9 Health and Social Care (Community Health and Standards) Act 2003 s 160(1)(b). As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.

10 Health and Social Care (Community Health and Standards) Act 2003 s 160(1)(c).

11 Health and Social Care (Community Health and Standards) Act 2003 s 160(1)(d).

12 Health and Social Care (Community Health and Standards) Act 2003 s 160(1)(e).

13 'Responsible body', in relation to a health service hospital, means: (1) in the case of a hospital vested in a National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18 (see PARA 155) or the National Health Service (Scotland) Act 1978 s 12A, or a primary care trust, the trust; and (2) in any other case, the body responsible for the management of the hospital: Health and Social Care (Community Health and Standards) Act 2003 s 160(4) (definition amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 239, 248(b)). As to the meaning of 'health service hospital' see PARA 21 note 7: definition applied by the Health and Social Care

(Community Health and Standards) Act 2003 s 168 (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 251(a)). As to primary care trusts see PARA 111.

14 As to the meaning of 'NHS treatment' see PARA 486 note 5.

15 Health and Social Care (Community Health and Standards) Act 2003 s 160(1)(f).

16 'Ambulance trust': (1) in relation to England or Wales, means a National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18 (see PARA 155), or an NHS foundation trust; (2) in relation to Scotland, means a special health board established under the National Health Service (Scotland) Act 1978 Act s 2(1)(b): Health and Social Care (Community Health and Standards) Act 2003 s 160(4) (definition amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 248(a)). As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to NHS foundation trusts see PARA 174.

17 As to the meaning of 'NHS ambulance services' see PARA 486 note 7.

18 Health and Social Care (Community Health and Standards) Act 2003 s 160(1)(g).

19 Health and Social Care (Community Health and Standards) Act 2003 s 160(2)(a).

20 Health and Social Care (Community Health and Standards) Act 2003 s 160(2)(b). As to the regulations made see note 3.

21 Health and Social Care (Community Health and Standards) Act 2003 s 160(3). As to the regulations made see note 3.

## **UPDATE**

### **496 Provision of information**

NOTE 3--SI 2006/3388 reg 5 amended: SI 2009/316 (amended by SI 2009/834).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/497. Use of information held by the Secretary of State.

#### **497. Use of information held by the Secretary of State.**

Where information is held by the Secretary of State<sup>1</sup>, or by a person<sup>2</sup> providing services to the Secretary of State in connection with the provision of those services<sup>3</sup>, for the purposes of, or for any purpose connected with, the exercise of functions under the Social Security (Recovery of Benefits) Act 1997<sup>4</sup>, the information may be used for the purposes of, or for any purpose connected with, the exercise of functions<sup>5</sup> relating to the recovery of NHS charges<sup>6</sup>, and be supplied to a qualifying person<sup>7</sup> for use for those purposes<sup>8</sup>.

Where information is held by the Secretary of State or the Scottish Ministers<sup>9</sup>, or by a person providing services to the Secretary of State or the Scottish Ministers in connection with provision of those services<sup>10</sup>, for the purposes of, or for any purpose connected with, the exercise of functions<sup>11</sup> relating to the recovery of NHS charges<sup>12</sup>, the information may be used for the purposes of, or for any purpose connected with, the exercise of functions under the Social Security (Recovery of Benefits) Act 1997<sup>13</sup>, and be supplied to a qualifying person<sup>14</sup> for use for those purposes<sup>15</sup>.

1 Health and Social Care (Community Health and Standards) Act 2003 s 161(1)(a). As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'person' see PARA 17 note 2.

3 Health and Social Care (Community Health and Standards) Act 2003 s 161(1)(b).

4 Health and Social Care (Community Health and Standards) Act 2003 s 161(1). As to the Social Security (Recovery of Benefits) Act 1997 see **DAMAGES** vol 12(1) (Reissue) PARA 903 et seq.

5 The functions under the Health and Social Care (Community Health and Standards) Act 2003 Pt 3 (ss 150-169).

6 Health and Social Care (Community Health and Standards) Act 2003 s 161(2)(a).

7 For these purposes 'qualifying person' means: (1) in the case of information held by the Secretary of State, a person providing services to the Secretary of State (Health and Social Care (Community Health and Standards) Act 2003 s 161(3)(a)(i)), or the Scottish Ministers or a person providing services to the Scottish Ministers (s 161(3)(a)(ii)); or (2) in the case of information held by a person providing services to the Secretary of State, the Secretary of State or another person providing services to the Secretary of State (s 161(3)(b)(i)), or the Scottish Ministers or a person providing services to the Scottish Ministers (s 161(3)(b)(ii)). As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

8 Health and Social Care (Community Health and Standards) Act 2003 s 161(2)(b).

9 Health and Social Care (Community Health and Standards) Act 2003 s 161(4)(a).

10 Health and Social Care (Community Health and Standards) Act 2003 s 161(4)(b).

11 The functions under the Health and Social Care (Community Health and Standards) Act 2003 Pt 3 (ss 150-169).

12 Health and Social Care (Community Health and Standards) Act 2003 s 161(4).

13 Health and Social Care (Community Health and Standards) Act 2003 s 161(5)(a).

14 For these purposes 'qualifying person' means: (1) in the case of information held by the Secretary of State, a person providing services to the Secretary of State (Health and Social Care (Community Health and Standards) Act 2003 s 161(6)(a)); (2) in the case of information held by the Scottish Ministers, the Secretary of



State or a person providing services to the Secretary of State (s 161(6)(b)); (3) in the case of information held by a person providing services to the Secretary of State, the Secretary of State or another person providing services to the Secretary of State (s 161(6)(c)); (4) in the case of information held by a person providing services to the Scottish Ministers, the Secretary of State or a person providing services to the Secretary of State (s 161(6)(d)).

15 Health and Social Care (Community Health and Standards) Act 2003 s 161(5)(b).

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#### **498. Payments to hospitals or ambulance trusts.**

If the Secretary of State<sup>1</sup> receives or the Scottish Ministers<sup>2</sup> receive a payment<sup>3</sup> of relevant NHS charges<sup>4</sup>:

- 326 (1) if the payment relates only to NHS treatment<sup>5</sup> received at a health service hospital<sup>6</sup>, he or they must pay the amount received to the responsible body<sup>7</sup> of the health service hospital<sup>8</sup>;
- 327 (2) if the payment relates only to the provision of NHS ambulance services<sup>9</sup>, he or they must pay the amount received to the relevant ambulance trust<sup>10</sup>;
- 328 (3) if the payment relates to NHS treatment received at more than one health service hospital, he or they must divide the amount received among the responsible bodies of the hospitals concerned in such manner as he considers or they consider appropriate<sup>11</sup>;
- 329 (4) if the payment relates to NHS treatment received at one or more health service hospitals and the provision of NHS ambulance services, he or they must divide the amount received among the responsible body or bodies of the hospital or hospitals and any relevant ambulance trusts concerned in such manner as he considers or they consider appropriate<sup>12</sup>.

Regulations<sup>13</sup> may make provision for the manner in which and intervals at which any such payments are to be made<sup>14</sup>, and make provision for cases where the responsible body of the health service hospital or relevant ambulance trust concerned has ceased to exist<sup>15</sup>.

Any amounts received under these provisions by the responsible bodies of the health service hospitals concerned must be used for the purposes of providing goods and services for the benefit of patients receiving NHS treatment at those hospitals<sup>16</sup>; and any amounts so received by the relevant ambulance trusts concerned must be used for the purposes of NHS ambulance services<sup>17</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Scottish Ministers see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

3 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 150(2): see PARA 486.

4 Health and Social Care (Community Health and Standards) Act 2003 s 162(1). Section 162(1) does not apply to any amount received by the Secretary of State or the Scottish Ministers under s 150(2) which he is or they are required to repay in accordance with regulations under s 153(2) (see PARA 488): s 162(2). As to the meaning of 'relevant NHS charges' see PARA 486 note 10.

5 As to the meaning of 'NHS treatment' see PARA 486 note 5.

6 As to the meaning of 'health service hospital' see PARA 21 note 7: definition applied by the Health and Social Care (Community Health and Standards) Act 2003 s 168 (amended by National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 239, 251(a)).

7 As to the meaning of 'responsible body' see PARA 496 note 13: definition applied by the Health and Social Care (Community Health and Standards) Act 2003 s 162(6).

8 Health and Social Care (Community Health and Standards) Act 2003 s 162(1)(a).

9 As to the meaning of 'NHS ambulance services' see PARA 486 note 7.

10 Health and Social Care (Community Health and Standards) Act 2003 s 162(1)(b). 'Relevant ambulance trust': (1) in relation to England or Wales, means the National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18 (see PARA 155), or the NHS foundation trust, which is designated by the Secretary of State for these purposes in relation to the health service hospital to which the injured person was taken for treatment; (2) in relation to Scotland, means the special health board, established under the National Health Service (Scotland) Act 1978 s 2(1)(b), which is designated by the Scottish Ministers for these purposes in relation to the health service hospital to which the injured person was taken for treatment: Health and Social Care (Community Health and Standards) Act 2003 s 162(6) (definition amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 249). As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to NHS foundation trusts see PARA 174.

11 Health and Social Care (Community Health and Standards) Act 2003 s 162(1)(c).

12 Health and Social Care (Community Health and Standards) Act 2003 s 162(1)(d).

13 As to the making of regulations see PARA 502.

14 Health and Social Care (Community Health and Standards) Act 2003 s 162(3)(a). The Secretary of State must make any payment not later than 40 days after the day on which he receives a payment of relevant NHS charges (Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 6(1)(a)); may make more than one such payment at the same time (reg 6(1)(b)); and may do so by direct credit transfer (reg 6(1)(c)). In respect of each payment, the Secretary of State must send to the responsible body or relevant ambulance trust a statement showing the name and address of the injured person to whom the statement relates (reg 6(2)(a)); the amount of the payment (reg 6(2)(b)); and the date of the incident in respect of which the payment is made (reg 6(2)(c)).

15 Health and Social Care (Community Health and Standards) Act 2003 s 162(3)(b). Such provision may include provision modifying the Health and Social Care (Community Health and Standards) Act 2003 Pt 3 (ss 150-169): s 162(3)(b). Where the Secretary of State receives a payment of relevant NHS charges, and the responsible body of the hospital (the 'old body') or the relevant ambulance trust (the 'old trust') concerned has ceased to exist, the Secretary of State must pay the amount received to the body to which the property, rights and liabilities of the old body or the old trust have been transferred: Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 6(3). If the property, rights and liabilities of the old body or the old trust have been transferred to more than one body, the Secretary of State, may divide the payment among those bodies in such manner as he considers appropriate: reg 6(4).

16 Health and Social Care (Community Health and Standards) Act 2003 s 162(4).

17 Health and Social Care (Community Health and Standards) Act 2003 s 162(5).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/499. Regulations governing lump sums, periodical payments etc.

#### **499. Regulations governing lump sums, periodical payments etc.**

Regulations<sup>1</sup> may make provision<sup>2</sup>: (1) for cases<sup>3</sup> in which two or more compensation payments<sup>4</sup> in the form of lump sums are made by the same person<sup>5</sup> in respect of the same injury<sup>6</sup>; (2) for cases<sup>7</sup> in which an agreement is entered into for the making of periodical compensation payments (whether of an income or capital nature)<sup>8</sup>, or periodical compensation payments and lump sum compensation payments<sup>9</sup>; (3) for cases in which the compensation payment<sup>10</sup> is an interim payment of damages which a court orders to be repaid<sup>11</sup>.

Regulations<sup>12</sup> may make provision modifying the application of the statutory provisions<sup>13</sup> in relation to cases in which a payment into court is made and, in particular, may provide: (a) for the making of a payment into court to be treated in prescribed<sup>14</sup> circumstances as the making of a compensation payment<sup>15</sup>; (b) for application for, and issue of, certificates<sup>16</sup>.

1 As to the making of regulations see PARA 502. As to the regulations made see the Personal Injuries (NHS Charges) (Amounts) Regulations 2007, SI 2007/115; the Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, regs 7-8.

2 Ie including provision modifying the Health and Social Care (Community Health and Standards) Act 2003 Pt 3 (ss 150-169).

3 Ie cases to which the Health and Social Care (Community Health and Standards) Act 2003 s 150(2) applies: see PARA 486.

4 As to the meaning of 'compensation payment' see PARA 486 note 2.

5 As to the meaning of 'person' see PARA 17 note 2.

6 Health and Social Care (Community Health and Standards) Act 2003 s 163(1)(a). As to the meaning of 'injury' see PARA 486 note 2. Regulations made by virtue of s 163(1)(a) may (among other things) provide for giving credit for amounts already paid (s 163(2)(a)); and for the payment by any person of any balance or the recovery from any person of any excess (s 163(2)(b)).

7 Ie cases to which the Health and Social Care (Community Health and Standards) Act 2003 s 150(2) applies: see PARA 486.

8 Health and Social Care (Community Health and Standards) Act 2003 s 163(1)(b)(i).

9 Health and Social Care (Community Health and Standards) Act 2003 s 163(1)(b)(ii).

10 Ie the compensation payment to which the Health and Social Care (Community Health and Standards) Act 2003 s 150(2) applies: see PARA 486.

11 Health and Social Care (Community Health and Standards) Act 2003 s 163(1)(c).

12 As to the regulations made see the Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 9.

13 Ie the Health and Social Care (Community Health and Standards) Act 2003 Pt 3 (ss 150-169).

14 'Prescribed' means prescribed by regulations: Health and Social Care (Community Health and Standards) Act 2003 s 168.

15 Health and Social Care (Community Health and Standards) Act 2003 s 163(3)(a). As to payments into court see **CIVIL PROCEDURE** vol 11 (2009) PARA 729 et seq.

16 Health and Social Care (Community Health and Standards) Act 2003 s 163(3)(b).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/500. Liability of insurers.

### **500. Liability of insurers.**

If a compensation payment<sup>1</sup> is made in a case where a person<sup>2</sup> is liable to any extent in respect of the injury<sup>3</sup>, and the liability is covered to any extent by a policy of insurance<sup>4</sup>, the policy is also to be treated as covering any liability<sup>5</sup> of that person in respect of relevant NHS charges<sup>6</sup>. Liability thus imposed on the insurer cannot be excluded or restricted<sup>7</sup>. Regulations<sup>8</sup> may in prescribed<sup>9</sup> cases limit the amount of the liability imposed on the insurer<sup>10</sup>.

1 As to the meaning of 'compensation payment' see PARA 486 note 2.

2 As to the meaning of 'person' see PARA 17 note 2.

3 Health and Social Care (Community Health and Standards) Act 2003 s 164(1)(a). As to the meaning of 'injury' see PARA 486 note 2.

4 Health and Social Care (Community Health and Standards) Act 2003 s 164(1)(b). References in s 164 to policies of insurance and their issue include references to contracts of insurance and their making: s 164(6). Section 164 applies in relation to policies of insurance issued before (as well as those issued after) the date on which it comes into force: s 164(5). Section 164 came into force on 29 January 2007: see the Health and Social Care (Community Health and Standards) Act 2003 (Commencement) (No 11) Order 2006, SI 2006/3397, art 2(2)(a). As to the making of contracts of insurance see **INSURANCE** vol 25 (2003 Reissue) PARA 36 et seq.

5 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 150(2): see PARA 486.

6 See the Health and Social Care (Community Health and Standards) Act 2003 s 164(1). As to the meaning of 'relevant NHS charges' see PARA 486 note 10.

7 Health and Social Care (Community Health and Standards) Act 2003 s 164(2). For this purpose excluding or restricting liability includes: (1) making the liability or its enforcement subject to restrictive or onerous conditions (s 164(3)(a)); (2) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy (s 164(3)(b)); or (3) excluding or restricting rules of evidence or procedure (s 164(3)(c)).

8 As to the making of regulations see PARA 502.

9 'Prescribed' means prescribed by regulations: Health and Social Care (Community Health and Standards) Act 2003 s 168.

10 Health and Social Care (Community Health and Standards) Act 2003 s 164(4). Where a policy of insurance is treated under s 164(1) (see the text to notes 1-6) as covering a person's liability under s 150(2) (see PARA 486), and under that policy of insurance the amount of cover in respect of the injury is limited to, or by reference to a maximum sum, or a proportion of the compensation which the insured person is liable to pay in respect of the injury, and in consequence of the limitation a proportion of the compensation which the insured person is liable to pay in respect of the injury would not be covered by the policy but for s 164(1), the liability imposed on the insurer by s 164(1) is reduced by the same proportion as its liability for the compensation payment: Personal Injuries (NHS Charges) (General) and Road Traffic (NHS Charges) (Amendment) Regulations 2006, SI 2006/3388, reg 10.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(7) CHARGING/(ii) Recovery of NHS Charges in Personal Injury Cases/501. Application to treatment at non-health service hospitals.

### **501. Application to treatment at non-health service hospitals.**

Regulations<sup>1</sup> may make provision for the statutory provisions relating to the recovery of NHS charges<sup>2</sup> to apply, with such modifications as may be prescribed, if: (1) a person<sup>3</sup> makes<sup>4</sup> a compensation payment<sup>5</sup>; but (2) the person to or in respect of whom the payment is made has<sup>6</sup> (a) received treatment as a result of the injury<sup>7</sup> at a qualifying hospital<sup>8</sup> under an NHS arrangement<sup>9</sup>; (b) been provided with NHS ambulance services<sup>10</sup> as a result of the injury for the purpose of taking him to a qualifying hospital for treatment under an NHS arrangement (unless he was dead on arrival at that hospital)<sup>11</sup>; or (c) received treatment as mentioned in head (a) above and been provided with NHS ambulance services as mentioned in head (b) above<sup>12</sup>.

1 The regulations may include provision excluding the application of the Road Traffic Act 1988 ss 157-159 (see **INSURANCE** vol 25 (2003 Reissue) PARA 741; **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARAS 957-959) in such description of case as may be prescribed: Health and Social Care (Community Health and Standards) Act 2003 s 165(4). 'Prescribed' means prescribed by regulations: s 168. As to the making of regulations see PARA 502. At the date at which this volume states the law no such regulations had been made.

2 Ie the Health and Social Care (Community Health and Standards) Act 2003 Pt 3 (ss 150-169).

3 As to the meaning of 'person' see PARA 17 note 2.

4 Ie as mentioned in the Health and Social Care (Community Health and Standards) Act 2003 s 150(1)(a): see PARA 486.

5 Health and Social Care (Community Health and Standards) Act 2003 s 165(1)(a). As to the meaning of 'compensation payment' see PARA 486 note 2.

6 The Health and Social Care (Community Health and Standards) Act 2003 s 165(1)(b) does not apply where the person to or in respect of whom the payment is made receives, or is taken to a hospital for, treatment which would be provided as mentioned in s 150(7)(a), (b) or (d) (see PARA 486) if it were provided at a health service hospital: s 165(2). As to the meaning of 'health service hospital' see PARA 21 note 7: definition applied by s 168 (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 251(a)).

7 As to the meaning of 'injury' see PARA 486 note 2.

8 'Qualifying hospital' means a hospital (within the meaning of the National Health Service Act 2006 s 275(1): see PARA 12 note 4) or the National Health Service (Scotland) Act 1978 s 108(1) which is not a health service hospital: Health and Social Care (Community Health and Standards) Act 2003 s 165(5) (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 239, 250(b)).

9 Health and Social Care (Community Health and Standards) Act 2003 s 165(1)(b)(i). 'NHS arrangement' means an arrangement or agreement between the hospital in question or a body responsible for it (s 165(3)(a)), and any of the following: a primary care trust; a National Health Service trust established under the National Health Service Act 2006 s 25 or the National Health Service (Wales) Act 2006 s 18 (see PARA 155) or the National Health Service (Scotland) Act 1978 s 12A; a local health board; a health board or special health board established under the National Health Service (Scotland) Act 1978 s 2; or an NHS foundation trust (Health and Social Care (Community Health and Standards) Act 2003 s 165(3)(b) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 239, 250(a)). As to primary care trusts see PARA 111. As to the meaning of 'local health board' see PARA 17 note 13. As to NHS foundation trusts see PARA 174.

10 As to the meaning of 'NHS ambulance services' see PARA 486 note 7.

11 Health and Social Care (Community Health and Standards) Act 2003 s 165(1)(b)(ii).

12 Health and Social Care (Community Health and Standards) Act 2003 s 165(1)(b)(iii).





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## 502. Regulations.

Any power to make regulations<sup>1</sup> is exercisable in relation to England and Wales<sup>2</sup> by the Secretary of State<sup>3</sup> by statutory instrument<sup>4</sup>. Before making any regulations the Secretary of State must consult the Welsh Ministers<sup>5</sup>. Any regulations may make different provision for different purposes<sup>6</sup>, and may make incidental, supplementary, consequential, transitory or transitional or saving provision<sup>7</sup>. Any power to make regulations, as well as being exercisable in relation to all cases to which it extends, may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case<sup>8</sup>.

1    Ie any power conferred by the Health and Social Care (Community Health and Standards) Act 2003 Pt 3 (ss 150-169): see PARAS 486-501.

2    As to the meanings of 'England' and 'Wales' see para 6 note 2.

3    Health and Social Care (Community Health and Standards) Act 2003 s 167(1)(a). As to the Secretary of State see PARA 6 note 8.

4    See the Health and Social Care (Community Health and Standards) Act 2003 s 195(4). The Secretary of State may not make a statutory instrument containing regulations under s 150(12) (see PARA 486), the first regulations made under s 153(2) (see PARA 488), or regulations making, by virtue of s 195(1)(b) (see the text to note 7), provision which amends or repeals any part of the text of an Act (including an Act of the Scottish Parliament), unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament: see s 195(5). A statutory instrument containing any other regulations is subject to annulment in pursuance of a resolution of either House of Parliament: see s 195(6). As to statutory instruments generally see **STATUTES** vol 44(1) (Reissue) PARA 1501 et seq. As to the Scottish Parliament see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

5    Health and Social Care (Community Health and Standards) Act 2003 s 195(3); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

6    Health and Social Care (Community Health and Standards) Act 2003 s 195(1)(a).

7    Health and Social Care (Community Health and Standards) Act 2003 s 195(1)(b).

8    Health and Social Care (Community Health and Standards) Act 2003 s 195(2) (amended by SI 2006/1407; National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(8) FINANCE/(i) In general/503. Extension of powers for financing the health service.

## **(8) FINANCE**

### **(i) In general**

#### **503. Extension of powers for financing the health service.**

In order to make more income available for improving the health service<sup>1</sup>, the Secretary of State<sup>2</sup> has the following powers<sup>3</sup>, which are exercisable outside as well as within Great Britain<sup>4</sup>. The powers are:

- 330 (1) to acquire, produce, manufacture and supply goods<sup>5</sup>;
- 331 (2) to acquire land<sup>6</sup> by agreement and manage and deal with land<sup>7</sup>;
- 332 (3) to supply accommodation to any person<sup>8</sup>;
- 333 (4) to supply services to any person and to provide new services<sup>9</sup>;
- 334 (5) to provide instruction for any person<sup>10</sup>;
- 335 (6) to develop and exploit ideas and exploit intellectual property<sup>11</sup>;
- 336 (7) to do anything whatsoever which appears to him to be calculated to facilitate, or to be conducive or incidental to, the exercise of any such power<sup>12</sup>; and
- 337 (8) to make such charge as he considers appropriate for anything that he does in the exercise of any such power and to calculate any such charge on any basis that he considers to be the appropriate commercial basis<sup>13</sup>.

The Secretary of State may give directions<sup>14</sup> (having regard to the existing work of voluntary bodies) for the exercise of any of those powers by any body constituted under the National Health Service Act 2006, other than an NHS trust<sup>15</sup> or an NHS foundation trust<sup>16</sup>, and with respect to the manner in which any such body is to exercise any such power<sup>17</sup>; and it is the duty of the body in question to comply with the directions<sup>18</sup>.

The Secretary of State must exercise those powers only if and to the extent that he is satisfied that anything which he proposes to do: (a) will not to a significant extent interfere with the performance by him of any duty imposed on him by the National Health Service Act 2006<sup>19</sup>; and (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at hospitals vested in the Secretary of State for the purposes of his functions under that Act<sup>20</sup> (whether as resident or non-resident patients)<sup>21</sup>.

1 As to the meaning of 'health service' see PARA 10 note 3: definition applied by the Health and Medicines Act 1988 s 7(1) (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 115, 116(a)).

2 As to the Secretary of State see PARA 6 note 8. All the functions of the Secretary of State under the Health and Medicines Act 1988 s 7, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. These functions are now vested in the Welsh Ministers: see the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Wales' see PARA 6 note 2. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

3 Health and Medicines Act 1988 s 7(1). However, neither the Secretary of State nor any body to which he gives directions under s 7(3) (see the text to notes 14-18) may disregard any enactment or rule of law or

override any person's contractual or proprietary rights: see s 7(1). As to the meaning of 'enactment' see PARA 10 note 7. As to the meaning of 'person' see PARA 17 note 2.

4 Health and Medicines Act 1988 s 7(2) (amended by the National Health Service and Community Care Act 1990 s 66(1), Sch 9 para 34). As to the meaning of 'Great Britain' see PARA 15 note 8.

5 Health and Medicines Act 1988 s 7(2)(a).

6 As to the meaning of 'land' see PARA 24 note 2.

7 Health and Medicines Act 1988 s 7(2)(b).

8 Health and Medicines Act 1988 s 7(2)(c). The Secretary of State must exercise the powers specified in s 7(2)(c) and (d) (see the text to note 9) only if and to the extent that he is satisfied that anything which he proposes to do in the exercise of those powers does not fall within the National Health Service Act 1977 s 65 (repealed): Health and Medicines Act 1988 s 7(6). The references in s 7(6), (8) (see note 20) to the National Health Service Act 1977 s 65 are references to that section prior to its repeal by the National Health Service (Consequential Provisions) Act 2006: Health and Medicines Act 1988 s 7(8A) (added by the National Health Service (Consequential Provisions) Act 2006 Sch 1, paras 115, 116(d)).

9 Health and Medicines Act 1988 s 7(2)(d). See also note 8.

10 Health and Medicines Act 1988 s 7(2)(e).

11 Health and Medicines Act 1988 s 7(2)(f). The Secretary of State must exercise the powers specified in s 7(2)(f) only after consulting (to the extent that it appears to him to be practical) any person who appears to him to have an interest through his own previous research in the ideas or intellectual property in question as to whether he should exercise them and, if so, as to any financial arrangements: s 7(7). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

12 Health and Medicines Act 1988 s 7(2)(g). The power specified in s 7(2)(g) includes power for the Secretary of State, where it appears to him that to do so is calculated to facilitate, or to be conducive or incidental to, the exercise of any such power, to: (1) form, or participate in the forming of, companies (s 7(7A) (a) (s 7(7A), (7B) added by the Health and Social Care Act 2001 s 5)); (2) invest in companies (whether by acquiring assets, securities or rights or otherwise) (Health and Medicines Act 1988 s 7(7A)(b) (as so added)); and (3) provide loans and guarantees and make other kinds of financial provision to or in respect of companies (s 7(7A)(c) (as so added)). Section 7(7A) is without prejudice to the generality of s 7(2)(g) (s 7(7B)(a) (as so added)), and any powers of the Secretary of State exercisable otherwise than by virtue of s 7 (s 7(7B)(b) (as so added)). 'Companies' means companies within the meaning of the Companies Act 1985 (see **COMPANIES** vol 14 (2009) PARAS 1, 24): Health and Medicines Act 1988 s 7(7B) (as so added).

13 Health and Medicines Act 1988 s 7(2)(h).

14 The directions may provide that any power to which they relate is exercisable subject to any limitations specified in the directions: Health and Medicines Act 1988 s 7(4). The directions may be varied or revoked by subsequent directions: s 7(5). See also note 3.

15 As to NHS trusts see PARA 155.

16 Health and Medicines Act 1988 s 7(3)(i) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 115, 116(b)). As to NHS foundation trusts see PARA 174.

17 Health and Medicines Act 1988 s 7(3)(ii).

18 Health and Medicines Act 1988 s 7(3).

19 Health and Medicines Act 1988 s 7(8)(a) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1, paras 115, 116(c)). As to the duty of the Secretary of State to promote the health service see PARA 10; and as to his duty to provide certain services see PARA 12.

20 Ie otherwise than under the National Health Service Act 1977 s 65 (repealed): Health and Medicines Act 1988 s 7(8)(b). See also note 8.

21 Health and Medicines Act 1988 s 7(8)(b).

## UPDATE

### 503 Extension of powers for financing the health service

NOTE 12--'Companies' means companies as defined in the Companies Act 2006 s 1159: Health and Medicines Act 1988 s 7(7B) (amended by SI 2009/1941).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(8) FINANCE/(i) In general/504. Indicative amounts for doctors' practices.

#### **504. Indicative amounts for doctors' practices.**

Until a day to be appointed the following provisions have effect<sup>1</sup>.

For each financial year, every primary care trust<sup>2</sup> and every local health board<sup>3</sup> must, by notice in writing<sup>4</sup> given to each practice<sup>5</sup> in relation to the members of which it is the relevant primary care trust or local health board<sup>6</sup>, specify an amount of money (known as an 'indicative amount') representing the basic price of the drugs, medicines and listed appliances which, in the opinion of the primary care trust or local health board, it is reasonable to expect will be supplied in that year pursuant to orders given by or on behalf of the members of that practice<sup>7</sup>.

The members of a practice must seek to secure that, except with the consent of the relevant primary care trust or local health board or for good cause, the orders for drugs, medicines and listed appliances given by them or on their behalf are such that the basic price of the items supplied pursuant to those orders in any financial year does not exceed the indicative amount notified<sup>8</sup> to the practice for that year<sup>9</sup>. For the purpose of measuring the extent to which a practice is operating within the indicative amount notified to it for any financial year, a primary care trust or local health board must set against that indicative amount an amount equal to the basic price of the drugs, medicines and listed appliances supplied in that year pursuant to orders given by or on behalf of members of the practice<sup>10</sup>.

Regulations may make provision as to the specification of, or means of calculating, the basic price of any drugs, medicines or listed appliances<sup>11</sup>.

1 As from a day to be appointed the National Health Service and Community Care Act 1990 s 18 is repealed by the Health Act 1999 s 65, Sch 4 paras 74, 80, Sch 5. At the date at which this volume states the law no such day had been appointed.

2 As to primary care trusts see PARA 111.

3 As to local health boards see PARA 75.

4 As to the meaning of 'writing' see PARA 7 note 2.

5 'Practice' means: (1) a person or body who has entered into a contract under the National Health Service Act 2006 s 84 or the National Health Service (Wales) Act 2006 s 42 (see PARA 242), otherwise than in partnership (National Health Service and Community Care Act 1990 s 18(3)(a) (s 18(3)(a), (b) substituted by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 para 56(1), (3)); or (2) two or more individuals practising in partnership who together have entered into such a contract (National Health Service and Community Care Act 1990 s 18(3)(b) (as so substituted)); and any reference to the members of a practice must be construed accordingly (s 18(3); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4)).

6 References to the 'relevant' primary care trust or local health board, in relation to a practice, are to the primary care trust or local health board with which it has entered into a contract under the National Health Service Act 2006 s 84 or the National Health Service (Wales) Act 2006 s 42 (see PARA 242): National Health Service and Community Care Act 1990 s 18(9) (added by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 para 56(1), (5)); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

7 National Health Service and Community Care Act 1990 s 18(1) (amended by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 para 65(8); the National Health Service Reform and Health Care Professions Act 2002 s 2(5), Sch 2 Pt 2 paras 53, 55(1)(a); the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 para 56(1), (2)). The National Health Service and Community Care Act 1990 s 18 does not apply in relation to the performance or provision of personal medical services in accordance with

arrangements made under the National Health Service Act 2006 s 92 or the National Health Service (Wales) Act 2006 s 50 (see PARA 267); National Health Service and Community Care Act 1990 s 18(8) (added by the National Health Service (Primary Care) Act 1997 Sch 2 para 65(10)); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

8     le under the National Health Service and Community Care Act 1990 s 18(1): see the text to notes 1-7.

9     National Health Service and Community Care Act 1990 s 18(4) (s 18(4), (5) amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 2 paras 53, 55(1)(b); the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 para 56(1), (4)).

10    National Health Service and Community Care Act 1990 s 18(5) (as amended: see note 9).

11    National Health Service and Community Care Act 1990 s 18(6). As to the regulations made see the National Health Service (Indicative Amounts) Regulations 1997, SI 1997/980.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(8) FINANCE/(ii) Strategic Health Authorities and Special Health Authorities/505. Means of meeting expenditure of strategic health authorities.

## **(ii) Strategic Health Authorities and Special Health Authorities**

### **505. Means of meeting expenditure of strategic health authorities.**

The Secretary of State<sup>1</sup> must pay in respect of each financial year<sup>2</sup> to each strategic health authority<sup>3</sup> sums not exceeding the amount allotted for that year<sup>4</sup> by him to the authority towards meeting the expenditure of the authority which is attributable to the performance by it of its functions<sup>5</sup> in that year<sup>6</sup>. The Secretary of State may<sup>7</sup> make an allotment<sup>8</sup> increasing or reducing an allotment previously made<sup>9</sup>.

Where the Secretary of State has made an initial determination<sup>10</sup> of the amount to be allotted for any year to a strategic health authority, he may increase that amount by a further sum if it appears to him that over a period notified to the authority it satisfied any objectives notified to it as objectives to be met in performing its functions<sup>11</sup>, or it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it)<sup>12</sup>. In making any such increase, the Secretary of State may<sup>13</sup> impose any conditions he considers appropriate on the application or retention by the strategic health authority of the sum in question<sup>14</sup>.

Where: (1) the Secretary of State has so increased by any sum the amount to be allotted for any year to a strategic health authority<sup>15</sup>; (2) has notified the authority of the allotment<sup>16</sup>; and (3) it subsequently appears to him that the authority has failed (wholly or in part) to satisfy any conditions imposed in making that increase<sup>17</sup>, he may reduce the allotment made to that authority for that year<sup>18</sup>, or when he has made an initial determination of the amount to be allotted for any subsequent year to the authority<sup>19</sup>, that amount<sup>20</sup>, by an amount not exceeding the sum mentioned in head (1) above<sup>21</sup>.

The Secretary of State may give directions<sup>22</sup> to a strategic health authority with respect to the application of sums paid to it under these provisions<sup>23</sup>, or the payment of sums by it to him in respect of charges or other sums referable to the valuation or disposal of assets<sup>24</sup>. Sums falling to be paid to strategic health authorities under these provisions are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine<sup>25</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the meaning of 'financial year' see PARA 132 note 1.

3 As to strategic health authorities see PARA 94 et seq.

4 An amount is allotted to a strategic health authority for a year under the National Health Service Act 2006 s 224 when it is notified by the Secretary of State that the amount is allotted to it for that year: s 224(7). 'Notified' means specified or referred to in a notice given to the strategic health authority by the Secretary of State: s 224(3).

5 As to the meaning of 'functions' see PARA 6 note 3.

6 National Health Service Act 2006 s 224(1). As to the financial duties of strategic health authorities see PARA 507. As to the power of authorities to raise money see PARA 78. There is no the equivalent provision to the National Health Service Act 2006 s 224 in relation to Wales there being no strategic health authorities in Wales. As to health service bodies in Wales see PARA 75. As to the meaning of 'Wales' see PARA 6 note 2. As to the use

by a strategic health authority of sums paid to it see *R v Secretary of State for Health, ex p Manchester Local Medical Committee* (1995) 25 BMLR 77. As to the difficulties of challenging a financial allotment considered by the recipient to be unreasonable see *Nottinghamshire County Council v Secretary of State for the Environment* [1986] AC 240, [1986] 1 All ER 199, HL (a case concerned with local government rate support grants).

7     Ie subject to the National Health Service Act 2006 s 224(6): see the text to notes 18-21.

8     Ie under the National Health Service Act 2006 s 224.

9     National Health Service Act 2006 s 224(8). The reference to a determination in s 224(2) (see the text to note 10) includes a determination made with a view to increasing or reducing an allotment previously so made: s 224(8).

10    See note 9.

11    National Health Service Act 2006 s 224(2)(a).

12    National Health Service Act 2006 s 224(2)(b).

13    Ie whether by directions under the National Health Service Act 2006 s 224(9) (see the text to notes 22-24) or otherwise.

14    National Health Service Act 2006 s 224(4).

15    National Health Service Act 2006 s 224(5)(a).

16    National Health Service Act 2006 s 224(5)(b).

17    National Health Service Act 2006 s 224(5)(c).

18    National Health Service Act 2006 s 224(6)(a).

19    Ie under the National Health Service Act 2006 s 224(1): see the text to notes 1-6.

20    National Health Service Act 2006 s 224(6)(b).

21    National Health Service Act 2006 s 224(6).

22    Such directions must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

23    National Health Service Act 2006 s 224(9)(a).

24    National Health Service Act 2006 s 224(9)(b).

25    National Health Service Act 2006 s 224(10).



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#### **506. Means of meeting expenditure of special health authorities.**

The Secretary of State<sup>1</sup> must pay in respect of each financial year<sup>2</sup> to each special health authority<sup>3</sup> sums not exceeding the amount allotted<sup>4</sup> for that year by him to the authority towards meeting the expenditure of the authority which is attributable to the performance by it of its functions<sup>5</sup> in that year<sup>6</sup>. The Secretary of State may make an allotment increasing or reducing an allotment previously made<sup>7</sup>.

The Secretary of State may give directions<sup>8</sup> to a special health authority with respect to the application of sums paid to it under these provisions<sup>9</sup>, or the payment of sums by it to him in respect of charges or other sums referable to the valuation or disposal of assets<sup>10</sup>. Sums falling to be paid to special health authorities under these provisions are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine<sup>11</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the meaning of 'financial year' see PARA 132 note 1.

3 As to special health authorities see PARA 136.

4 An amount is allotted to a special health authority for a year when it is notified by the Secretary of State that the amount is allotted to it for that year: National Health Service Act 2006 s 225(2).

5 As to the meaning of 'functions' see PARA 6 note 3.

6 National Health Service Act 2006 s 225(1). As to the financial duties of special health authorities see PARA 507. As to the power of authorities to raise money see PARA 78. As to the equivalent provision to the National Health Service Act 2006 s 225 in relation to Wales see the National Health Service (Wales) Act 2006 s 171. As to the meaning of 'Wales' see PARA 6 note 2.

7 National Health Service Act 2006 s 225(3).

8 Such directions must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

9 National Health Service Act 2006 s 225(4)(a).

10 National Health Service Act 2006 s 225(4)(b).

11 National Health Service Act 2006 s 225(5).

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### **507. Financial duties.**

Each strategic health authority<sup>1</sup> and each special health authority<sup>2</sup> must, in respect of each financial year<sup>3</sup>, perform its functions<sup>4</sup> so as to secure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of the amount allotted to it<sup>5</sup> for that year<sup>6</sup>, any sums received by it in that year under any provision<sup>7</sup> of the National Health Service Act 2006<sup>8</sup>, and any sums received by it in that year otherwise than under the Act for the purpose of enabling it to defray any such expenditure<sup>9</sup>. The Secretary of State<sup>10</sup> may give such directions<sup>11</sup> to a strategic health authority or special health authority as appear to be requisite to secure that the authority complies with this duty<sup>12</sup>.

To the extent to which any expenditure is defrayed by a strategic health authority or special health authority as trustee or on behalf of a strategic health authority or special health authority by special trustees<sup>13</sup>, or any sums are received by a strategic health authority or special health authority as trustee or under the power to raise money<sup>14</sup>, that expenditure and those sums must be disregarded for these purposes<sup>15</sup>. Sums which, in the hands of a strategic health authority or special health authority, cease to be trust funds and become applicable by the authority otherwise than as trustee must be treated, on their becoming so applicable, as having been received by the authority otherwise than as trustee<sup>16</sup>. The Secretary of State may by directions determine<sup>17</sup>: (1) whether specified<sup>18</sup> sums must, or must not, be treated for these purposes as received under the National Health Service Act 2006 by a specified strategic health authority or specified special health authority<sup>19</sup>; (2) whether specified expenditure must, or must not, be treated for those purposes as expenditure<sup>20</sup> of a specified strategic health authority<sup>21</sup>, or a specified special health authority<sup>22</sup>; or (3) the extent to which, and the circumstances in which, sums received by a strategic health authority<sup>23</sup> or by a special health authority<sup>24</sup>, but not yet spent must be treated for these purposes as part of the expenditure of the authority and to which financial year's expenditure they must be attributed<sup>25</sup>.

1 As to strategic health authorities see PARA 94 et seq.

2 As to special health authorities see PARA 136.

3 As to the meaning of 'financial year' see PARA 132 note 1.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 I.e. in the case of a strategic health authority under the National Health Service Act 2006 s 224(1) (see PARA 505) and in the case of a special health authority under s 225(1) (see PARA 506).

6 National Health Service Act 2006 s 226(1)(a), (2)(a). As to the equivalent provision to the National Health Service Act 2006 s 226 in relation to special health authorities in Wales see the National Health Service (Wales) Act 2006 s 172. There are no strategic health authorities in Wales. As to health service bodies in Wales see PARA 75. As to the meaning of 'Wales' see PARA 6 note 2.

7 I.e. under any provision of the National Health Service Act 2006, other than in the case of a strategic health authority sums received by it under that s 224(1) (see PARA 505) and in the case of special health authority sums received by it under s 225(1) (see PARA 506).

8 National Health Service Act 2006 s 226(1)(b), (2)(b).

9 National Health Service Act 2006 s 226(1)(c), (2)(c).

10 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

11 Directions under the National Health Service Act 2006 s 226 must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

12 National Health Service Act 2006 s 226(3).

13 National Health Service Act 2006 s 226(4)(a). As to the meaning of 'special trustees' see PARA 66 note 1.

14 National Health Service Act 2006 s 226(4)(b). The power to raise money is that under s 222: see PARA 78.

15 National Health Service Act 2006 s 226(4). Of the sums received by a strategic health authority or special health authority under the National Health Service Act 2006 s 222 (see PARA 78), so much only as accrues to the authority after defraying any expenses incurred in obtaining them must be so disregarded: s 226(6).

16 National Health Service Act 2006 s 226(5).

17 Ie subject to the National Health Service Act 2006 s 226(4): see the text to notes 13-15. See also note 11.

18 'Specified' means of a description specified in the directions: National Health Service Act 2006 s 226(8).

19 National Health Service Act 2006 s 226(7)(a).

20 Ie as expenditure within the National Health Service Act 2006 s 226(1) or (2): see the text to notes 1-9.

21 National Health Service Act 2006 s 226(7)(b)(i).

22 National Health Service Act 2006 s 226(7)(b)(ii).

23 Ie under the National Health Service Act 2006 s 224: see PARA 505.

24 Ie under the National Health Service Act 2006 s 225: see PARA 506.

25 National Health Service Act 2006 s 226(7)(c).

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### **508. Resource limits.**

Each strategic health authority<sup>1</sup> and each special health authority<sup>2</sup> must ensure that the use of its resources<sup>3</sup> in a financial year<sup>4</sup> does not exceed the amount specified for it in relation to that year<sup>5</sup> by the Secretary of State<sup>6</sup>. The Secretary of State may give such directions<sup>7</sup> to a strategic health authority or special health authority as appear to be requisite to secure that the authority complies with this duty<sup>8</sup>; and may give directions: (1) specifying uses of resources which must, or must not, be taken into account<sup>9</sup>; (2) making provision for determining to which strategic health authority or special health authority certain uses of resources must be attributed<sup>10</sup>; (3) specifying descriptions of resources which must, or must not, be taken into account<sup>11</sup>.

1 As to strategic health authorities see PARA 94 et seq.

2 As to special health authorities see PARA 136.

3 A reference to the use of resources is a reference to their expenditure, consumption or reduction in value: National Health Service Act 2006 s 227(6).

4 As to the meaning of 'financial year' see PARA 132 note 1.

5 Where the Secretary of State has specified an amount in respect of a financial year, he may vary the amount by a later specification: National Health Service Act 2006 s 227(5). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

6 National Health Service Act 2006 s 227(1). The provisions of s 226(4)-(6) (see PARA 507) apply in relation to the duty under s 227(1) as they apply in relation to the duties under s 226(1) and (2); and for that purpose references to the defraying of expenditure and the receipt of sums are references to the incurring of liabilities and the acquisition of assets: s 227(4). As to the equivalent provision to the National Health Service Act 2006 s 227 in relation to special health authorities in Wales see the National Health Service (Wales) Act 2006 s 173. There are no strategic health authorities in Wales. As to health service bodies in Wales see PARA 75. As to the meaning of 'Wales' see PARA 6 note 2.

7 Directions under the National Health Service Act 2006 s 227 must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

8 National Health Service Act 2006 s 227(3).

9 National Health Service Act 2006 s 227(2)(a).

10 National Health Service Act 2006 s 227(2)(b).

11 National Health Service Act 2006 s 227(2)(c).

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### **(iii) Primary Care Trusts**

#### **509. Public funding of primary care trusts.**

The Secretary of State<sup>1</sup> must, in respect of each financial year<sup>2</sup>, pay to each primary care trust<sup>3</sup> sums equal to its pharmaceutical services expenditure<sup>4</sup>, and sums not exceeding the amount allotted by the Secretary of State<sup>5</sup> to the primary care trust for that year towards meeting the trust's main expenditure<sup>6</sup> in that year<sup>7</sup>. The Secretary of State may make an allotment increasing or reducing<sup>8</sup> an allotment previously made<sup>9</sup>.

Where the Secretary of State has made an initial determination of the amount to be allotted for any year to a primary care trust, he may increase that amount by a further sum if it appears to him that over a period notified to the trust it satisfied any objectives notified to it as objectives to be met in performing its functions<sup>10</sup>, or it performed well against any criteria notified to it as criteria relevant to the satisfactory performance of its functions (whether or not the method of measuring its performance against those criteria was also notified to it)<sup>11</sup>. In making any such increase, the Secretary of State may<sup>12</sup> impose any conditions he considers appropriate on the application or retention by the primary care trust of the sum in question<sup>13</sup>.

Where: (1) the Secretary of State has so increased by any sum the amount to be allotted for any year to a primary care trust<sup>14</sup>; (2) has notified the trust of the allotment<sup>15</sup>; and (3) it subsequently appears to him that the trust has failed (wholly or in part) to satisfy any conditions imposed in making that increase<sup>16</sup>, he may reduce the allotment made to the trust for that year<sup>17</sup>, or when he has made an initial determination of the amount to be allotted for any subsequent year to the trust<sup>18</sup>, that amount<sup>19</sup>, by an amount not exceeding the sum mentioned in head (1) above<sup>20</sup>.

The Secretary of State may give directions<sup>21</sup> to a primary care trust with respect to the application of sums paid to it under these provisions<sup>22</sup>, or the payment of sums by it to him in respect of charges or other sums referable to the valuation or disposal of assets<sup>23</sup>. Sums falling to be paid to primary care trusts under these provisions are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine<sup>24</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the meaning of 'financial year' see PARA 132 note 1.

3 As to primary care trusts see PARA 111.

4 National Health Service Act 2006 s 228(1)(a). 'Pharmaceutical services expenditure' means expenditure of a primary care trust which is attributable to the payment of remuneration to persons providing pharmaceutical services (Sch 14 para 1(1)(a)), and is not excluded (Sch 14 para 1(1)(b)). Expenditure is excluded if it is attributable to: (1) the reimbursement of expenses of persons providing pharmaceutical services which are designated expenses incurred in connection with the provision of those services (or in giving instruction in matters relating to those services) (Sch 14 para 1(2)(a)); (2) remuneration referable to the cost of drugs (Sch 14 para 1(2)(b)); or (3) remuneration paid to persons providing additional pharmaceutical services (in accordance with directions under s 127: see PARA 346), in respect of such of those services as are designated (Sch 14 para 1(2)(c)). As to the meaning of 'person' see PARA 17 note 2. 'Pharmaceutical services' does not include additional pharmaceutical services: Sch 14 para 4(1). As to the meaning of 'pharmaceutical services' generally see PARA 339. As to the meaning of 'additional pharmaceutical services' see PARA 346 note 4. 'Designated' means designated in writing by the Secretary of State (and different designations may be made for different purposes):

Sch 14 para 4(1). As to the meaning of 'writing' see PARA 7 note 2. 'Drugs' includes medicines and listed appliances (within the meaning given by s 126: see PARA 339): Sch 14 para 4(1). As to the meaning of 'medicine' see PARA 339 note 4. 'Remuneration referable to the cost of drugs' includes (except in Sch 14 para 1(2)(b) and subject to Sch 14 para 4(2)) remuneration payable to persons providing local pharmaceutical services: Sch 14 para 4(1). The Secretary of State must determine what remuneration paid by primary care trusts to persons providing pharmaceutical services or local pharmaceutical services must be treated for these purposes as remuneration referable to the cost of drugs: Sch 14 para 4(2). The Secretary of State may treat all remuneration paid by primary care trusts to such persons, so far as it is met by an NHS trust or an NHS foundation trust under s 234(4) (see PARA 522), as remuneration referable to the cost of drugs for those purposes: Sch 14 para 4(3). As to the meaning of 'local pharmaceutical services' see PARA 419 note 5. As to the apportionment of remuneration referable to the cost of drugs see PARA 512.

5 An amount is allotted to a primary care trust for a year under the National Health Service Act 2006 s 228 when the trust is notified by the Secretary of State that the amount is allotted to it for that year: s 228(8). 'Notified' means specified or referred to in a notice given to the primary care trust by the Secretary of State: s 228(4). In determining the amount to be allotted for any year to a primary care trust under s 228(1)(b) (or in varying the amount under s 228(9) (see the text to notes 8-9)), the Secretary of State may take into account, in whatever way he considers appropriate: (1) the primary care trust's pharmaceutical services expenditure (s 228(2)(a)); and (2) expenditure which would have been the primary care trust's pharmaceutical services expenditure but for an order under s 234(2) (see PARA 522) (s 228(2)(b)), during any period he considers appropriate (or such elements of that expenditure as he considers appropriate) (s 228(2)).

6 'Main expenditure', in relation to a primary care trust and the year in question, means: (1) the prescribed expenditure of the primary care trust (National Health Service Act 2006 Sch 14 para 2(1)(a)); (2) any other expenditure of the trust attributable to the performance of its functions in that year (other than pharmaceutical services expenditure and remuneration referable to the cost of drugs) (Sch 14 para 2(1)(b)); and (3) expenditure attributable to remuneration referable to the cost of drugs for which the trust is accountable in that year (whether paid by it or by another primary care trust) (Sch 14 para 2(1)(c)). The prescribed expenditure is expenditure attributable to: (a) the reimbursement in that year of expenses of persons providing pharmaceutical services which are designated expenses incurred in connection with the provision of those services (or in giving instruction in matters relating to those services) (Sch 14 para 2(2)(a)); or (b) remuneration paid in that year to persons providing additional pharmaceutical services (in accordance with directions under s 127: see PARA 346), in respect of such of those services as are designated (Sch 14 para 2(2)(b)). As to the meaning of 'functions' see PARA 6 note 3.

7 National Health Service Act 2006 s 228(1)(b). As to the financial duties of primary care trusts see PARA 510. Primary care trusts do not exist in Wales. As to the equivalent provision to the National Health Service Act 2006 s 228 in relation to local health boards in Wales see the National Health Service (Wales) Act 2006 s 174. As to health service bodies in Wales see PARA 75. As to the meaning of 'Wales' see PARA 6 note 2. As to the difficulties of challenging a financial provision considered by the recipient as unreasonable see *Nottinghamshire County Council v Secretary of State for the Environment* [1986] AC 240, [1986] 1 All ER 199, HL (a case concerned with local government rate support grants).

8 le subject to the National Health Service Act 2006 s 228(7): see the text to notes 17-20.

9 National Health Service Act 2006 s 228(9). The reference to a determination in s 228(3) (see the text to note 10) includes a determination made with a view to increasing or reducing an allotment previously made: s 228(9). See also note 5.

10 National Health Service Act 2006 s 228(3)(a). See also note 9.

11 National Health Service Act 2006 s 228(3)(b).

12 le whether by directions under the National Health Service Act 2006 s 228(10) (see the text to notes 21-23) or otherwise.

13 National Health Service Act 2006 s 228(5).

14 National Health Service Act 2006 s 228(6)(a).

15 National Health Service Act 2006 s 228(6)(b).

16 National Health Service Act 2006 s 228(6)(c).

17 National Health Service Act 2006 s 228(7)(a).

18 le under the National Health Service Act 2006 s 228(1)(b): see the text to notes 5-7.

- 19 National Health Service Act 2006 s 228(7)(b).
- 20 National Health Service Act 2006 s 228(7)(c).
- 21 Such directions must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9.
- 22 National Health Service Act 2006 s 228(10)(a).
- 23 National Health Service Act 2006 s 228(10)(b).
- 24 National Health Service Act 2006 s 228(11).

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### **510. Financial duties.**

Each primary care trust<sup>1</sup> must, in respect of each financial year<sup>2</sup>, perform its functions<sup>3</sup> so as to secure that its expenditure which is attributable to the performance by it of its functions in that year (not including its pharmaceutical services expenditure<sup>4</sup>) does not exceed the aggregate of: (1) the amount allotted to it<sup>5</sup> for that year<sup>6</sup>; (2) any sums received by it in that year under any provision<sup>7</sup> of the National Health Service Act 2006<sup>8</sup>; and (3) any sums received by it in that year otherwise than under the Act for the purpose of enabling it to defray any such expenditure<sup>9</sup>. The Secretary of State<sup>10</sup> may give such directions<sup>11</sup> to a primary care trust as appear to be requisite to secure that it complies with this duty<sup>12</sup>.

To the extent to which any expenditure is defrayed by a primary care trust as trustee or on behalf of a primary care trust by special trustees<sup>13</sup>, or any sums are received by a primary care trust as trustee or under the power to raise money<sup>14</sup>, that expenditure and those sums<sup>15</sup> must be disregarded for these purposes<sup>16</sup>. Sums which, in the hands of a primary care trust, cease to be trust funds and become applicable by the primary care trust otherwise than as trustee must be treated, on their becoming so applicable, as having been received by the primary care trust otherwise than as trustee<sup>17</sup>. The Secretary of State may by directions determine<sup>18</sup>: (a) whether specified<sup>19</sup> sums must, or must not, be treated for these purposes as received under the National Health Service Act 2006 by a specified primary care trust<sup>20</sup>; (b) whether specified expenditure must, or must not, be treated for these purposes as expenditure<sup>21</sup> of a specified primary care trust<sup>22</sup>; or (c) the extent to which, and the circumstances in which, sums received by a primary care trust from the Secretary of State<sup>23</sup> but not yet spent must be treated for these purposes as part of the expenditure of the trust and to which financial year's expenditure they must be attributed<sup>24</sup>.

1 As to primary care trusts see PARA 111.

2 As to the meaning of 'financial year' see PARA 132 note 1.

3 As to the meaning of 'functions' see PARA 6 note 3.

4 As to the meaning of 'pharmaceutical services expenditure' see PARA 509 note 4.

5 Ie under the National Health Service Act 2006 s 228(1)(b): see PARA 509.

6 National Health Service Act 2006 s 229(1)(a). Primary care trusts do not exist in Wales. As to the equivalent provision to the National Health Service Act 2006 s 229 in relation to local health boards in Wales see the National Health Service (Wales) Act 2006 s 175. As to health service bodies in Wales see PARA 75. As to the meaning of 'Wales' see PARA 6 note 2.

7 Ie other than sums received by it under the National Health Service Act 2006 s 229.

8 National Health Service Act 2006 s 229(1)(b).

9 National Health Service Act 2006 s 229(1)(c).

10 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

11 Directions under the National Health Service Act 2006 s 229 must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

12 National Health Service Act 2006 s 229(2).



- 13 National Health Service Act 2006 s 229(3)(a). As to the meaning of 'special trustees' see PARA 66 note 1.
- 14 National Health Service Act 2006 s 229(3)(b). The power to raise money is that under s 222: see PARA 78.
- 15 Of the sums received by a primary care trust under the National Health Service Act 2006 s 222 (see PARA 78) so much only as accrues to the primary care trust after defraying any expenses incurred in obtaining them must be disregarded: s 229(5).
- 16 National Health Service Act 2006 s 229(3).
- 17 National Health Service Act 2006 s 229(4).
- 18 Ie subject to the National Health Service Act 2006 s 229(3): see the text to notes 13-16.
- 19 'Specified' means of a description specified in the directions: National Health Service Act 2006 s 229(7).
- 20 National Health Service Act 2006 s 229(6)(a).
- 21 Ie within the National Health Service Act 2006 s 229(1): see the text to notes 1-9.
- 22 National Health Service Act 2006 s 229(6)(b).
- 23 Ie under the National Health Service Act 2006 s 228: see PARA 509.
- 24 National Health Service Act 2006 s 229(6)(c).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(8) FINANCE/(iii) Primary Care Trusts/511. Resource limits.

### **511. Resource limits.**

Each primary care trust<sup>1</sup> must ensure that the use of its resources<sup>2</sup> in a financial year<sup>3</sup> does not exceed the amount specified for it in relation to that year by the Secretary of State<sup>4</sup>. For these purposes no account may be taken of any use of resources for the purpose of a primary care trust's pharmaceutical services expenditure<sup>5</sup>; but in specifying an amount for a primary care trust, or in varying the amount<sup>6</sup>, the Secretary of State may take into account (in whatever way he considers appropriate) any such use of resources<sup>7</sup>, and the use of any resources which would have been for the purpose of the trust's pharmaceutical services expenditure but for an order<sup>8</sup> as to payment of remuneration<sup>9</sup>, during any period he considers appropriate (or such elements of such uses of resources as he considers appropriate)<sup>10</sup>. Where the Secretary of State has specified an amount in respect of a financial year, he may vary the amount by a later specification<sup>11</sup>.

The Secretary of State may give such directions<sup>12</sup> to a primary care trust as appear to be requisite to secure that it complies with this duty<sup>13</sup>. The Secretary of State may also give directions: (1) specifying uses of resources which must, or must not, be taken into account<sup>14</sup>; (2) making provision for determining to which primary care trust certain uses of resources must be attributed<sup>15</sup>; (3) specifying descriptions of resources which must, or must not, be taken into account<sup>16</sup>.

1 As to primary care trusts see PARA 111.

2 A reference to the use of resources is a reference to their expenditure, consumption or reduction in value: National Health Service Act 2006 s 230(8).

3 As to the meaning of 'financial year' see PARA 132 note 1.

4 National Health Service Act 2006 s 230(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. The provisions of s 229(3)-(5) (see PARA 510) apply in relation to the duty under s 230(1) as they apply in relation to the duty under s 229(1); and for that purpose references to the defraying of expenditure and the receipt of sums are references to the incurring of liabilities and the acquisition of assets: s 230(6). Primary care trusts do not exist in Wales. As to the equivalent provision to the National Health Service Act 2006 s 230 in relation to local health boards in Wales see the National Health Service (Wales) Act 2006 s 176. As to health service bodies in Wales see PARA 75. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 s 230(2). As to the meaning of 'pharmaceutical services expenditure' see PARA 509 note 4.

6 Ie under the National Health Service Act 2006 s 230(5): see the text to note 11.

7 National Health Service Act 2006 s 230(3)(a).

8 Ie under the National Health Service Act 2006 s 234(2): see PARA 522.

9 National Health Service Act 2006 s 230(3)(b).

10 National Health Service Act 2006 s 230(3).

11 National Health Service Act 2006 s 230(5).

12 Directions under the National Health Service Act 2006 s 230 must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

13 National Health Service Act 2006 s 230(7).

- 14 National Health Service Act 2006 s 230(4)(a).
- 15 National Health Service Act 2006 s 230(4)(b).
- 16 National Health Service Act 2006 s 230(4)(c).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(8) FINANCE/(iii) Primary Care Trusts/512. Apportionment of remuneration referable to the cost of drugs.

## **512. Apportionment of remuneration referable to the cost of drugs.**

For each financial year<sup>1</sup>, the Secretary of State<sup>2</sup> must apportion among all primary care trusts<sup>3</sup>, in such manner as he considers appropriate, the total of the remuneration referable to the cost of drugs<sup>4</sup> which is paid by each primary care trust in that year<sup>5</sup>. The Secretary of State may, in particular, exercise his discretion: (1) so that any apportionment reflects, in the case of each primary care trust, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the primary care trust in question<sup>6</sup>; (2) by reference to averaged or estimated amounts<sup>7</sup>.

A primary care trust is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is so apportioned to it<sup>8</sup>. The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a primary care trust other than the primary care trust which is accountable for the payment to be reimbursed in such manner as he may determine<sup>9</sup>.

1 As to the meaning of 'financial year' see PARA 132 note 1.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 As to primary care trusts see PARA 111.

4 As to the meanings of 'drugs' and 'remuneration referable to the cost of drugs' see PARA 509 note 4.

5 National Health Service Act 2006 Sch 14 para 3(1). Primary care trusts do not exist in Wales. As to the equivalent provision to the National Health Service Act 2006 Sch 14 in relation to local health boards in Wales see the National Health Service (Wales) Act 2006 Sch 8. As to health service bodies in Wales see PARA 75. As to the meaning of 'Wales' see PARA 6 note 2.

6 National Health Service Act 2006 Sch 14 para 3(4)(a).

7 National Health Service Act 2006 Sch 14 para 3(4)(b).

8 National Health Service Act 2006 Sch 14 para 3(2). Where in any financial year any remuneration referable to the cost of drugs for which a primary care trust is accountable is paid by another primary care trust, the remuneration must be treated (for the purposes of s 228 (see PARA 509) and s 229 (see PARA 510)) as having been paid by the first primary care trust in the performance of its functions: Sch 14 para 3(3). As to the meaning of 'functions' see PARA 6 note 3.

9 National Health Service Act 2006 Sch 14 para 3(5).

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#### **(iv) NHS Trusts**

##### **513. Originating capital.**

Each NHS trust<sup>1</sup> has an originating capital of an amount specified in an order<sup>2</sup> made by the Secretary of State<sup>3</sup>. Such an order may be made only with the consent of the Treasury<sup>4</sup>.

The originating capital of an NHS trust is an amount representing the excess of the valuation of its assets over the amounts of its liabilities<sup>5</sup>. In determining the originating capital of an NHS trust, there must be left out of account such assets or liabilities as are, or are of a class, determined for these purposes by the Secretary of State with the consent of the Treasury<sup>6</sup>. An NHS trust's originating capital is deemed to have been issued out of moneys provided by Parliament and is an asset of the Consolidated Fund<sup>7</sup>. An NHS trust's originating capital is public dividend capital<sup>8</sup>.

1 As to NHS trusts see PARA 155.

2 As to the making of orders see PARA 9. Orders made under these provisions relate to individual trusts and as such are not recorded in this work. As an example of such an order see the National Health Service Trusts (Originating Capital) Order 2007, SI 2007/836.

3 National Health Service Act 2006 Sch 5 para 1(1). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Sch 5 para 1 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 4 para 1. As to the meaning of 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 Sch 5 para 1(7). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 National Health Service Act 2006 Sch 5 para 1(2). 'Assets' means the assets which, on or in connection with the establishment of the NHS trust, are or will be transferred to it (whether before, on or after its operational date): Sch 5 para 1(8). 'Liabilities' means the liabilities which are or will be so transferred: Sch 5 para 1(8). As to the operational date of an NHS trust see PARA 156 note 10.

6 National Health Service Act 2006 Sch 5 para 1(3).

7 National Health Service Act 2006 Sch 5 para 1(4). As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804. As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

8 National Health Service Act 2006 Sch 5 para 1(5). With the consent of the Treasury, the Secretary of State may determine: (1) the dividend which is payable at any time on any public dividend capital issued, or treated as issued, to an NHS trust under the National Health Service Act 2006 (Sch 5 para 1(6)(a)); (2) the amount of any such public dividend capital which must be repaid at any time (Sch 5 para 1(6)(b)); (3) any other terms on which any public dividend capital is so issued, or treated as issued (Sch 5 para 1(6)(c)). As to public dividend capital see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 745.

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#### **514. Financial obligations.**

Each NHS trust<sup>1</sup> must ensure that its revenue is not less than sufficient, taking one financial year<sup>2</sup> with another, to meet outgoings properly chargeable to revenue account<sup>3</sup>. Each NHS trust must achieve such financial objectives as may from time to time be set by the Secretary of State<sup>4</sup> with the consent of the Treasury<sup>5</sup> and as are applicable to it<sup>6</sup>. Any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description<sup>7</sup>.

1 As to NHS trusts see PARA 155.

2 As to the meaning of 'financial year' see PARA 132 note 1.

3 National Health Service Act 2006 Sch 5 para 2(1). As to the equivalent provision to the National Health Service Act 2006 Sch 5 para 2 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 4 para 2. As to the meaning of 'Wales' see PARA 6 note 2.

4 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

5 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 National Health Service Act 2006 Sch 5 para 2(2).

7 National Health Service Act 2006 Sch 5 para 2(3).

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### 515. Borrowing.

For the purpose of its functions<sup>1</sup> an NHS trust<sup>2</sup> may borrow (both temporarily, by way of overdraft, and longer term) from the Secretary of State<sup>3</sup> or from any other person<sup>4</sup>. An NHS trust may not mortgage or charge any of its assets or in any other way use any of its assets as security for a loan<sup>5</sup>. The Secretary of State may, with the consent of the Treasury, instead of making a loan to an NHS trust, pay an amount to the NHS trust as public dividend capital<sup>6</sup>.

The Secretary of State may guarantee, in such manner and on such conditions as, with the approval of the Treasury, he considers appropriate, the repayments of the principal of, and the payment of interest on, any sums which an NHS trust borrows from a person other than the Secretary of State<sup>7</sup>. If any sums are issued in fulfilment of such a guarantee<sup>8</sup>, the NHS trust concerned must make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct payments of such amounts as the Secretary of State with the consent of the Treasury so directs in or towards repayment of the sums so issued<sup>9</sup>; and payments of interest, at such rates as the Secretary of State with the consent of the Treasury so directs, on what is outstanding for the time being in respect of sums so issued<sup>10</sup>.

1 As to the meaning of 'functions' see PARA 6 note 3.

2 As to NHS trusts see PARA 155.

3 The Secretary of State must determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any): National Health Service Act 2006 Sch 5 para 3(4). As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6. As to the equivalent provision to the National Health Service Act 2006 Sch 5 paras 3-6 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 4 paras 3-6. As to the meaning of 'Wales' see PARA 6 note 2.

4 National Health Service Act 2006 Sch 5 para 3(1). As to the meaning of 'person' see PARA 17 note 2. This provision is subject to any direction given by the Secretary of State under s 8 (see PARA 16), to the provisions of Sch 5 para 3 and to any limit imposed under Schedule 5: Sch 5 para 3(2). The aggregate of all sums borrowed by NHS trusts which are required to provide or manage services at or from hospitals or other establishments or facilities which are situated in England must not exceed £5,000 million or such other sum not exceeding £10,000 million as may be specified by order made by the Secretary of State with the consent of the Treasury: Sch 5 para 5. As to the meaning of 'hospital' see PARA 12 note 4. As to the meaning of 'facilities' see PARA 12 note 7. As to the meaning of 'England' see PARA 6 note 2. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517. As to the making of orders see PARA 9.

5 National Health Service Act 2006 Sch 5 para 3(3).

6 National Health Service Act 2006 Sch 5 para 6. As to public dividend capital see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 745.

7 National Health Service Act 2006 Sch 5 para 4(1). Immediately after such a guarantee is given, the Secretary of State must lay a statement of the guarantee before each House of Parliament: Sch 5 para 4(2). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

8 Where any sum is issued for fulfilling a guarantee, the Secretary of State must lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged: National Health Service Act 2006 Sch 5 para 4(3). As to the meaning of 'financial year' see PARA 132 note 1.

9 National Health Service Act 2006 Sch 5 para 4(4)(a).

10 National Health Service Act 2006 Sch 5 para 4(4)(b).



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**516. Supplementary payments.**

The Secretary of State<sup>1</sup> may make a payment to an NHS trust<sup>2</sup>. The payment may be subject to such conditions as he considers appropriate, including conditions as to repayment<sup>3</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 National Health Service Act 2006 Sch 5 para 7(1). As to the equivalent provision to the National Health Service Act 2006 Sch 5 para 7 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 4 para 7. As to the meaning of 'Wales' see PARA 6 note 2.

3 National Health Service Act 2006 Sch 5 para 7(2).

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### 517. Investment and surplus funds.

If it appears to the Secretary of State<sup>1</sup> that any sum held by an NHS trust<sup>2</sup> otherwise than as trustee is surplus to its foreseeable requirements, the trust must, if the Secretary of State with the approval of the Treasury<sup>3</sup> and after consultation<sup>4</sup> with the trust so directs<sup>5</sup>, pay that sum into the Consolidated Fund<sup>6</sup>.

An NHS trust has power to invest money held by it in any investments, including investments which do not produce income, specified in directions given<sup>7</sup> by the Secretary of State<sup>8</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to NHS trusts see PARA 155.

3 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

5 Such directions must be given by an instrument in writing: see the National Health Service Act 2006 s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

6 National Health Service Act 2006 Sch 5 para 8. As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031. As to the equivalent provision to the National Health Service Act 2006 Sch 5 paras 8-10 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 4 paras 8-10. As to the meaning of 'Wales' see PARA 6 note 2.

7 I.e. under the National Health Service Act 2006 s 8: see PARA 16. Any such direction with respect to the power conferred on an NHS trust by Sch 5 para 3 (see PARA 515) (Sch 5 para 10(a)), or the maximum amount which an NHS trust may invest in any investments or class of investments (Sch 5 para 10(b)), may be given only with the consent of the Treasury (Sch 5 para 10).

8 National Health Service Act 2006 Sch 5 para 9(1). This provision does not apply in relation to money held by an NHS trust as trustee: Sch 5 para 9(2).

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## (v) Accounts and Audit

### 518. Accounts.

Each NHS body<sup>1</sup> must keep proper accounts and proper records in relation to the accounts<sup>2</sup>. If the Secretary of State<sup>3</sup> so directs<sup>4</sup> with the approval of the Treasury<sup>5</sup>, the accounts of any such body of a description specified in the direction must be kept in such form as is so specified<sup>6</sup>. Each NHS body must prepare in respect of each financial year<sup>7</sup> annual accounts in such form as the Secretary of State may direct with the approval of the Treasury<sup>8</sup>. Each special health authority that is an NHS body must send copies of any such annual accounts prepared by it to the Secretary of State by the specified date<sup>9</sup>, and to the Comptroller and Auditor General<sup>10</sup> as soon as is reasonably practicable following the end of the financial year in question<sup>11</sup>.

1 The following are NHS bodies for these purposes: (1) any strategic health authority (National Health Service Act 2006 Sch 15 para 1(1)(a)); (2) any primary care trust (Sch 15 para 1(1)(c)); (3) any NHS trust all or most of whose hospitals, establishments and facilities are situated in England (Sch 15 para 1(1)(d)); (4) any trustees for such an NHS trust appointed under Sch 4 para 10 (see PARA 166) (Sch 15 para 1(1)(e)); (5) any special trustees appointed as mentioned in s 212(1) (see PARA 66) for a trust all or most of whose hospitals, establishments and facilities are situated in England (Sch 15 para 1(1)(f)); (6) any trustees for a primary care trust appointed under Sch 3 para 12 (see PARA 123) (Sch 15 para 1(1)(g)); (7) any special health authority which performs functions only or mainly in respect of England (Sch 15 para 1(1)(b), (2)(a)); or neither performs functions only or mainly in respect of England, nor performs functions only or mainly in respect of Wales (Sch 15 para 1(1)(b), (2)(b)). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111. As to NHS trusts see PARA 155. As to the meaning of 'hospital' see PARA 12 note 4. As to the meaning of 'facilities' see PARA 12 note 7. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to special health authorities see PARA 136. As to the meaning of 'functions' see PARA 6 note 3.

2 National Health Service Act 2006 Sch 15 para 2(1). Nothing in Sch 15 para 2, so far as it applies to an NHS body of any description, has effect in relation to accounts relating to a relevant charitable trust: Sch 15 paras 2(3), 8(2). 'Relevant charitable trust', in relation to an NHS body, means a charitable trust whose trustee or trustees is or are that body: Sch 15 para 8(1). As to the equivalent provision to the National Health Service Act 2006 Sch 15 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 9.

3 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

4 Directions under the National Health Service Act 2006 Sch 15 must be given by an instrument in writing: see s 273(4); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

5 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 National Health Service Act 2006 Sch 15 para 2(2). See also note 2.

7 As to the meaning of 'financial year' see PARA 132 note 1.

8 National Health Service Act 2006 Sch 15 para 3(1). Nothing in this provision, so far as it applies to an NHS body of any description, requires any annual accounts prepared by the body to include matters relating to a relevant charitable trust: Sch 15 paras 3(2), 8(3).

9 National Health Service Act 2006 Sch 15 para 5(3)(a). 'Specified date', in relation to a financial year, means such date as the Secretary of State may direct in relation to that year: Sch 15 para 5(4).

10 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

11 National Health Service Act 2006 Sch 15 para 5(3)(b).

**UPDATE**

**518 Accounts**

TEXT AND NOTES 9-11--National Health Service Act 2006 Sch 15 para 5(3) amended: SI 2008/817.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(8) FINANCE/(v) Accounts and Audit/519. Audit of accounts.

### **519. Audit of accounts.**

Any annual accounts prepared<sup>1</sup> by any NHS body<sup>2</sup> that is not a special health authority<sup>3</sup> must be audited in accordance with the Audit Commission Act 1998<sup>4</sup> by an auditor or auditors appointed by the Audit Commission<sup>5</sup>. The Comptroller and Auditor General<sup>6</sup> may examine any such accounts and any records relating to them<sup>7</sup>, and any report on them by the auditor or auditors<sup>8</sup>. Each such NHS body must send a copy of any accounts as audited to the Secretary of State<sup>9</sup> by the specified date<sup>10</sup>. If the body is a primary care trust<sup>11</sup>, it must also send a copy of any such accounts to any strategic health authority<sup>12</sup> whose area includes any part of the primary care trust's area<sup>13</sup>.

Where a special health authority that is an NHS body sends<sup>14</sup> a copy of its annual accounts to the Comptroller and Auditor General<sup>15</sup>, he must examine, certify and report on the accounts<sup>16</sup>. The special health authority must lay before both Houses of Parliament<sup>17</sup> a copy of the accounts<sup>18</sup>, and the Comptroller and Auditor General's report on them<sup>19</sup>.

1     le under the National Health Service Act 2006 Sch 15 para 3: see PARA 518.

2     As to the meaning of 'NHS body' see PARA 518 note 1.

3     As to special health authorities see PARA 136.

4     As to the audit of accounts under the Audit Commission Act 1988 see **LOCAL GOVERNMENT** vol 69 (2009) PARA 757 et seq.

5     National Health Service Act 2006 Sch 15 para 4(1), (2). 'Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 744 et seq): Sch 15 para 4(4) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)). As to the equivalent provision to the National Health Service Act 2006 Sch 15 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 9. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6     As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

7     National Health Service Act 2006 Sch 15 para 4(3)(a).

8     National Health Service Act 2006 Sch 15 para 4(3)(b).

9     As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

10    National Health Service Act 2006 Sch 15 para 5(1). As to the meaning of 'specified date' see PARA 518 note 9.

11    As to primary care trusts see PARA 111.

12    As to strategic health authorities see PARA 94 et seq.

13    National Health Service Act 2006 Sch 15 para 5(2).

14    le under the National Health Service Act 2006 Sch 15 para 5(3): see PARA 518.

15    National Health Service Act 2006 Sch 15 para 6(1).

16    National Health Service Act 2006 Sch 15 para 6(2).

- 17 As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.
- 18 National Health Service Act 2006 Sch 15 para 6(3)(a).
- 19 National Health Service Act 2006 Sch 15 para 6(3)(b).

## **UPDATE**

### **519 Audit of accounts**

TEXT AND NOTES 5, 10, 15, 19--National Health Service Act 2006 Sch 15 paras 4(1), 5(1), 6(1), (3) amended: SI 2008/817.

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## 520. Summarised accounts.

The Secretary of State<sup>1</sup> must prepare summarised accounts relating to NHS bodies<sup>2</sup> that are not special health authorities<sup>3</sup> in respect of each financial year<sup>4</sup>. The summarised accounts must be prepared in such form as the Treasury<sup>5</sup> may direct<sup>6</sup>. The Secretary of State must transmit the summarised accounts to the Comptroller and Auditor General<sup>7</sup> not later than the end of the month of November following the financial year<sup>8</sup> to which they relate<sup>9</sup>. The Comptroller and Auditor General must examine and certify the summarised accounts<sup>10</sup>, and lay copies of them and his report on them before both Houses of Parliament<sup>11</sup>.

The Treasury may by order<sup>12</sup> provide for the above provisions<sup>13</sup> not to apply in relation to a specified body for a specified year<sup>14</sup>. Before making such an order in respect of an NHS body<sup>15</sup> the Treasury must consult the Comptroller and Auditor General<sup>16</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the meaning of 'NHS body' see PARA 518 note 1.

3 As to special health authorities see PARA 136.

4 National Health Service Act 2006 Sch 15 para 7(1), (2). Nothing in Sch 15 para 7, so far as it applies to an NHS body of any description, requires any summarised accounts prepared in relation to the body to include matters relating to a relevant charitable trust or a relevant non-charitable trust: see Sch 15 paras 7(3), 8(3), 9(2). As to the meaning of 'relevant charitable trust' see PARA 518 note 2. 'Relevant non-charitable trust', in relation to an NHS body, means a trust which is not a charitable trust and whose trustee or trustees is or are that body: Sch 15 para 9(1). Schedule 15 para 7 has effect subject to any provision made under the Government Resources and Accounts Act 2000 s 14(1) (see the text to notes 12-16): National Health Service Act 2006 Sch 15 para 7(7). As to the equivalent provision to the National Health Service Act 2006 Sch 15 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 9. As to the meaning of 'Wales' see PARA 6 note 2.

5 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 National Health Service Act 2006 Sch 15 para 7(4). As to the making of directions see ss 272(7), (8), 273(1), (2); and PARA 9.

7 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

8 As to the meaning of 'financial year' see PARA 132 note 1.

9 National Health Service Act 2006 Sch 15 para 7(5).

10 National Health Service Act 2006 Sch 15 para 7(6)(a).

11 National Health Service Act 2006 Sch 15 para 7(6)(b). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

12 Such an order must be made by statutory instrument (Government Resources and Accounts Act 2000 s 14(5)(a)), and is subject to annulment in pursuance of a resolution of either House of Parliament (s 14(5)(b)). As to statutory instruments generally see **STATUTES** vol 44(1) (Reissue) PARA 1501 et seq. As to the orders made see the Government Resources and Accounts Act 2000 (Summarised Accounts of Special Health Authorities) Order 2003, SI 2003/983; the Government Resources and Accounts Act 2000 (Summarised Accounts of Special Health Authorities) Order 2004, SI 2004/1416; the Special Health Authorities (Summarised Accounts) Order 2006, SI 2006/250.

13     le the National Health Service Act 2006 Sch 15 para 7: see the text to notes 1-11. The Government Resources and Accounts Act 2000 s 14(1) applies also to the National Health Service (Wales) Act 2006 Sch 9 para 5 (see note 4).

14     Government Resources and Accounts Act 2000 s 14(1) (amended by the Health Act 2006 s 80(1), Sch 8 para 44(1), (2); the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 281, 299(a)). The Treasury may make an order in respect of a body for a year only if it considers that the preparation of summarised accounts for that body and that year is unnecessary having regard to information contained or to be contained in a department's resource accounts under the Government Resources and Accounts Act 2000 s 5 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) (s 14(2)(a)), or accounts under s 9 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) (s 14(2)(b)).

15     le an NHS body within the meaning of the National Health Service Act 2006 Sch 15 para 1 (see PARA 518 note 1), other than a special health authority to which Sch 15 para 1(2)(b) applies: see the Government Resources and Accounts Act 2000 s 14(3) (amended by the Health Act 2006 Sch 8 para 44(1), (3); the National Health Service (Consequential Provisions) Act 2006 Sch 1, paras 281, 299(b)).

16     Government Resources and Accounts Act 2000 s 14(3). Before making an order in respect of an NHS body within the meaning of the National Health Service (Wales) Act 2006 Sch 9 para 1 (see note 4), the Treasury must consult the Welsh Ministers and the Auditor General for Wales: Government Resources and Accounts Act 2000 s 14(4) (substituted by the Health Act 2006 Sch 8 para 44(1), (4); and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 281, 299(c)); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.



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## **(vi) Allowances and Remuneration**

### **521. Allowances for members of certain bodies.**

The Secretary of State<sup>1</sup> may pay to members of any body specified by him in an order<sup>2</sup> as a body formed for the purpose of performing a function<sup>3</sup> connected with the provision of services under the National Health Service Act 2006<sup>4</sup>, such travelling and other allowances, including compensation for loss of remunerative time, as he may determine<sup>5</sup>. Such payments are subject to such conditions as to records, certificates, or otherwise as the Secretary of State may determine<sup>6</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of orders see PARA 9. At the date at which this volume states the law no such order had been made.

3 As to the meaning of 'functions' see PARA 6 note 3.

4 As to services under the National Health Service Act 2006 see PARAS 10-12.

5 National Health Service Act 2006 s 233(1). As to the equivalent provision to the National Health Service Act 2006 s 233 in relation to Wales see the National Health Service (Wales) Act 2006 s 179. As to the meaning of 'Wales' see PARA 6 note 2.

6 National Health Service Act 2006 s 233(2).

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## **522. Special arrangement as to payment of remuneration.**

Where the Secretary of State<sup>1</sup> considers it appropriate for remuneration in respect of: (1) primary medical services<sup>2</sup>, primary dental services<sup>3</sup>, pharmaceutical services<sup>4</sup> or primary ophthalmic services<sup>5</sup>; or (2) services provided under a pilot scheme<sup>6</sup> or an LPS scheme<sup>7</sup>, to be paid by a particular body<sup>8</sup>, and the functions<sup>9</sup> of the body do not include the function of paying the remuneration, the Secretary of State may by order<sup>10</sup> confer that function on that body<sup>11</sup>. Any sums required to enable a body to pay the remuneration must, if there is no provision<sup>12</sup> authorising the payment of the sums by the Secretary of State or out of money provided by Parliament<sup>13</sup>, be paid by him<sup>14</sup>.

If the Secretary of State by order so provides with respect to remuneration in respect of such pharmaceutical services or such local pharmaceutical services<sup>15</sup> as may be specified in the order, an NHS trust<sup>16</sup> or an NHS foundation trust<sup>17</sup> determined in accordance with the order has the function of paying sums so determined to a primary care trust<sup>18</sup> so determined in respect of the whole or any part of that remuneration<sup>19</sup>.

Each health authority, primary care trust and special health authority<sup>20</sup> has the function of paying remuneration to any person<sup>21</sup> in respect of pharmaceutical services or local pharmaceutical services provided by him which consist of the supply of drugs, medicines<sup>22</sup> or listed appliances ordered by a medical practitioner<sup>23</sup> in pursuance of that authority's or trust's functions<sup>24</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to primary medical services see PARA 241.

3 As to primary dental services see PARA 277.

4 As to the meaning of 'pharmaceutical services' see PARA 339.

5 National Health Service Act 2006 s 234(1)(a) (not yet in force in so far as it relates to primary ophthalmic services). Section 234(1)(a) comes into force in so far as it relates to primary ophthalmic services immediately after, and to the extent that, the Health Act 2006 Sch 8 para 22 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 Sch 8 para 22 is repealed but such repeal does not take effect until Sch 8 para 22 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 Sch 8 para 22 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed. As to primary ophthalmic services see PARA 328. As to references to primary ophthalmic services until the coming into force of the law relating to primary ophthalmic services see PARA 328 note 1.

6 As to the meaning of 'pilot scheme' see PARA 419.

7 National Health Service Act 2006 s 234(1)(b). As to the meaning of 'LPS scheme' see PARA 431.

8 National Health Service Act 2006 s 234(1). As to the equivalent provision to the National Health Service Act 2006 s 234 in relation to Wales see the National Health Service (Wales) Act 2006 s 180. As to the meaning of 'Wales' see PARA 6 note 2.

9 As to the meaning of 'functions' see PARA 6 note 3.

10 As to the making of orders see PARA 9.

- 11 National Health Service Act 2006 s 234(2). By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the following order has effect under these provisions: the National Health Service (Payment of Remuneration--Special Arrangement) Order 1988, SI 1988/865: see the text to notes 20-24.
- 12 le apart from the National Health Service Act 2006 s 234.
- 13 As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.
- 14 National Health Service Act 2006 s 234(3).
- 15 As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.
- 16 As to NHS trusts see PARA 155.
- 17 As to NHS foundation trusts see PARA 174.
- 18 As to primary care trusts see PARA 111.
- 19 National Health Service Act 2006 s 234(4)(a). Section 243(3) (see the text to notes 12-14) does not apply with respect to the whole or that part of the remuneration: s 234(4)(b). At the date at which this volume states the law no such order had been made.
- 20 As to special health authorities see PARA 136.
- 21 As to the meaning of 'person' see PARA 17 note 2.
- 22 As to the meaning of 'medicine' see PARA 339 note 4.
- 23 As to the meaning of 'medical practitioner' see PARA 84 note 7.
- 24 National Health Service (Payment of Remuneration--Special Arrangement) Order 1988, SI 1988/865, art 2 (amended by SI 2002/2469; SI 2002/2861). In relation to Wales see also the National Health Service Trusts (Pharmaceutical Services Remuneration--Special Arrangement) Order 1991, SI 1991/509.

## **UPDATE**

### **522 Special arrangement as to payment of remuneration**

NOTE 7--National Health Service Act 2006 s 234(1)(b) amended: Health Service Act 2009 Sch 1 para 7.

NOTE 24--SI 1991/509 revoked: SI 2009/1824.

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### **523. Superannuation of officers of certain hospitals.**

The Secretary of State<sup>1</sup> may enter into an agreement with the governing body of any hospital<sup>2</sup>: (1) for admitting officers<sup>3</sup> of the hospital of such classes as may be provided in the agreement to participate, on such terms and conditions as may be so provided, in the superannuation benefits<sup>4</sup> provided under regulations<sup>5</sup> in like manner as officers of NHS trusts<sup>6</sup>; and (2) those regulations apply accordingly in relation to the officers so admitted subject to such modifications<sup>7</sup> as may be provided in the agreement<sup>8</sup>. The governing body of any hospital to which this provision applies has such powers as may be necessary for the purpose of giving effect to any terms and conditions on which their officers are admitted to participate in those superannuation benefits<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8. The territorial limit on the exercise of the functions of the Secretary of State does not apply in relation to the National Health Service Act 2006 s 235: see s 271(1), (3)(d); and PARA 6.

2 The National Health Service Act 2006 s 235 applies to any hospital (not vested in the Secretary of State) which is used, in pursuance of arrangements made by the governing body of the hospital with the Secretary of State, for the provision of services under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006: National Health Service Act 2006 s 235(3). As to the meaning of 'hospital' see PARA 12 note 4. As to services under the National Health Service Act 2006 see PARAS 10-12.

3 As to the meaning of 'officer' see PARA 28 note 5.

4 'Superannuation benefits' means annual superannuation allowances, gratuities and periodical payments payable on retirement, death or incapacity, and similar benefits: National Health Service Act 2006 s 235(4).

5 Ie under regulations made under the Superannuation Act 1972 s 10: see PARA 711.

6 National Health Service Act 2006 s 235(1)(a). As to NHS trusts see PARA 155.

7 As to the meaning of 'modifications' see PARA 45 note 14.

8 National Health Service Act 2006 s 235(1)(b).

9 National Health Service Act 2006 s 235(2).

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## **524. Payments for certain medical examinations.**

Where a medical practitioner<sup>1</sup> carries out a medical<sup>2</sup> examination of any person<sup>3</sup> with a view to an application for his admission to hospital for assessment or treatment being made under the Mental Health Act 1983<sup>4</sup>, the Secretary of State<sup>5</sup> must pay to that medical practitioner reasonable remuneration in respect of that examination and in respect of any recommendation or report made by him with regard to the person examined<sup>6</sup>, and the amount of any expenses reasonably incurred by him in connection with the examination or the making of any such recommendation or report<sup>7</sup>. No such payment may be made to a medical practitioner in respect of an examination carried out in the provision of primary medical services<sup>8</sup> for that person<sup>9</sup>; or in respect of an examination carried out or any recommendation or report made as part of his duty as an officer<sup>10</sup> of a primary care trust<sup>11</sup>, NHS trust<sup>12</sup>, special health authority<sup>13</sup>, NHS foundation trust<sup>14</sup> or local health board<sup>15</sup>.

1 As to the meaning of 'medical practitioner' see PARA 84 note 7.

2 As to the meaning of 'medical' see PARA 10 note 5.

3 The National Health Service Act 2006 s 236 applies only in a case where it is intended, when the medical examination of the person in question is carried out, that if he is admitted to hospital in pursuance of an application mentioned in s 236(1), the whole cost of his maintenance and treatment will be defrayed out of moneys provided by Parliament: s 236(3). As to the meaning of 'hospital' see PARA 12 note 4. As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.

4 Ie under the Mental Health Act 1983 Pt 2 (ss 2-34).

5 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

6 National Health Service Act 2006 s 236(1)(a). As to the equivalent provision to the National Health Service Act 2006 s 236 in relation to Wales see the National Health Service (Wales) Act 2006 s 181. As to the meaning of 'Wales' see PARA 6 note 2.

7 National Health Service Act 2006 s 236(1)(b).

8 As to primary medical services see PARA 241.

9 National Health Service Act 2006 s 236(2)(a).

10 As to the meaning of 'officer' see PARA 28 note 5.

11 As to primary care trusts see PARA 111.

12 As to NHS trusts see PARA 155.

13 As to special health authorities see PARA 136.

14 As to NHS foundation trusts see PARA 174.

15 National Health Service Act 2006 s 236(2)(b). As to the meaning of 'local health board' see PARA 17 note 13.

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## **(vii) Taxation**

### **525. Taxation of health service bodies.**

A health service body<sup>1</sup> is exempt from corporation tax<sup>2</sup>. It is also exempt in relation to the taxation of chargeable gains<sup>3</sup>, stamp duty<sup>4</sup>, value added tax<sup>5</sup>, and inheritance tax<sup>6</sup>.

1 'Health service body' means a strategic health authority, a special health authority, a primary care trust, a local health board, an NHS trust, and an NHS foundation trust: see the Income and Corporation Taxes Act 1988 s 519A(2) (s 519A added by the National Health Service and Community Care Act 1990 s 61(1); Income and Corporation Taxes Act 1988 s 519A(2) amended by the Health Authorities Act 1995 ss 2(1), 5(1), Sch 1 para 114; the Health Act 1999 s 65, Sch 4 para 73; the National Health Service Reform and Health Care Professions Act 2002 s 6(2), Sch 5 para 27; SI 2002/2469; the Health and Social Care (Community Health and Standards) Act 2003 s 33(1); the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 99, 100; SI 2007/961). As to strategic health authorities see PARA 94 et seq. As to special health authorities see PARA 136. As to primary care trusts see PARA 111. As to local health boards see PARA 75. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174.

2 See the Income and Corporation Taxes Act 1988 s 519A(1) (as added: see note 1); and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1215.

3 See the Taxation of Chargeable Gains Act 1992 s 271(3); and **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 285.

4 See the National Health Service and Community Care Act 1990 s 61(3); and **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1105. The National Health Service and Community Care Act 1990 s 61(3) applies to an NHS foundation trust as it applies to an NHS trust: National Health Service Act 2006 s 58.

5 See the Value Added Tax Act 1994 s 41; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 208.

6 See the Inheritance Tax Act 1984 s 25, Sch 3; and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 523.

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## **(9) PUBLIC INVOLVEMENT AND SCRUTINY**

### **(i) Local Involvement Networks**

#### **526. Local involvement networks.**

Each local authority<sup>1</sup> must make contractual arrangements for the purpose of ensuring that there are means by which the following activities for the local authority's area can be carried on in the area<sup>2</sup>. The activities for a local authority's area are<sup>3</sup>: (1) promoting, and supporting, the involvement of people in the commissioning, provision and scrutiny of local care services<sup>4</sup>; (2) enabling people to monitor for the purposes of their consideration of specified matters<sup>5</sup>, and to review for those purposes, the commissioning and provision of local care services<sup>6</sup>; (3) obtaining the views of people about their needs for, and their experiences of, local care services<sup>7</sup>; and (4) making views such as are mentioned in head (3) above known, and reports and recommendations about how local care services could or ought to be improved, to persons responsible for commissioning, providing, managing or scrutinising local care services<sup>8</sup>.

In relation to any particular arrangements made<sup>9</sup> by a local authority<sup>10</sup>, the arrangements must be made with a person who is not a local authority, a National Health Service trust<sup>11</sup>, an NHS foundation trust<sup>12</sup>, a primary care trust<sup>13</sup>, or a strategic health authority<sup>14</sup>. The arrangements must secure the result that none of the following will be a local involvement network<sup>15</sup>: the person with whom the arrangements are made, the local authority concerned, any other local authority, a National Health Service trust, an NHS foundation trust, a primary care trust, or a strategic health authority<sup>16</sup>. The arrangements may (in particular) make provision as respects co-operation between a local involvement network and any English network or English networks<sup>17</sup>. The arrangements may provide for the making of payments by the local authority<sup>18</sup>; and must include the required provision about annual reports<sup>19</sup>.

The Secretary of State must make regulations which provide that arrangements made by a local authority must require prescribed provision<sup>20</sup> to be included in local involvement network arrangements<sup>21</sup>. The regulations may in particular provide that the arrangements must require local involvement network arrangements to include: (a) prescribed provision relating to the way in which certain decisions of a local involvement network<sup>22</sup> are to be taken<sup>23</sup>; (b) prescribed provision relating to the authorisation of individuals as authorised representatives<sup>24</sup>; (c) prescribed provision relating to the use by a local involvement network of money derived from the arrangements<sup>25</sup>; (d) prescribed provision relating to the consequences of contravention by a local involvement network of any provision of the arrangements<sup>26</sup>.

1 'Local authority' means a county council in England; a district council in England other than a council for a district in a county for which there is a county council; a London borough council; the Common Council of the City of London; and the Council of the Isles of Scilly: Local Government and Public Involvement in Health Act 2007 s 229(1). As to local government areas see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the meaning of 'England' see PARA 6 note 2.

2 Local Government and Public Involvement in Health Act 2007 s 221(1). When a local authority becomes subject to the duty in s 221(1), it also becomes subject to the temporary duty to ensure until the relevant time that there are means by which the activities specified in s 221(2) (see heads (1)-(4) in the text) can be carried on in the local authority's area: see s 228(1), (2). The Secretary of State may by regulations define the 'relevant time' and make other provision about the ways in which the temporary duty may or may not be complied with:

see s 228(3)-(7). As to the regulations made see the Local Involvement Networks Regulations 2008, SI 2008/528; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 398-399.

Any regulations made by the Secretary of State under the Local Government and Public Involvement in Health Act 2007 must be made by statutory instrument: s 240(1). A statutory instrument containing regulations under s 221, s 224(2)(e) (see PARA 527) or s 225 (see PARA 528) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament: see s 240(6). Any other statutory instrument under the Act is subject to annulment in pursuance of a resolution of either House of Parliament: s 240(7). Any regulations may make different provision for different cases: s 240(10). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

3 The Secretary of State may by regulations amend the Local Government and Public Involvement in Health Act 2007 s 221 for the purpose of adding to the activities for the time being specified in s 221(2): s 221(4). Before making such regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate: s 221(5). As to the Secretary of State see PARA 6 note 8. As to the meaning of 'person' see PARA 17 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

4 Local Government and Public Involvement in Health Act 2007 s 221(2)(a). 'Local care services', in relation to a local authority, means care services provided in the authority's area, and care services provided, in any place, for people from the area: s 221(6). 'Care services' means services provided as part of the health service in England and services provided as part of the social services functions of a local authority: see s 221(6). As to the meaning of 'health service' see PARA 10 note 3: definition applied by s 221(6). 'Social services functions', in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006): Local Government and Public Involvement in Health Act 2007 s 221(6). As to the provision made relating to the referral of social care matters by a local involvement networks see s 226; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 399.

5 The specified matters are: (1) the standard of provision of local care services; (2) whether, and how, local care services could be improved; (3) whether, and how, local care services ought to be improved: Local Government and Public Involvement in Health Act 2007 s 221(3).

6 Local Government and Public Involvement in Health Act 2007 s 221(2)(b).

7 Local Government and Public Involvement in Health Act 2007 s 221(2)(c).

8 Local Government and Public Involvement in Health Act 2007 s 221(2)(d).

9 le under the Local Government and Public Involvement in Health Act 2007 s 221(1): see the text to notes 1-2.

10 See the Local Government and Public Involvement in Health Act 2007 s 222(1).

11 As to NHS trusts see PARA 155.

12 As to NHS foundation trusts see PARA 174.

13 As to primary care trusts see PARA 111.

14 Local Government and Public Involvement in Health Act 2007 s 222(3). As to strategic health authorities see PARA 94 et seq.

15 'Local involvement network' means a person who, in pursuance of the arrangements, is to carry on in the local authority's area activities specified in heads (1)-(4) in the text for that area: Local Government and Public Involvement in Health Act 2007 s 222(2).

16 Local Government and Public Involvement in Health Act 2007 s 222(4).

17 Local Government and Public Involvement in Health Act 2007 s 222(5). 'English network' means a person who, in pursuance of arrangements made under s 221(1) (see the text to notes 1-2) by any local authority, is to carry on activities specified in heads (1)-(4) in the text: s 222(8).

18 Local Government and Public Involvement in Health Act 2007 s 222(6).

19 Local Government and Public Involvement in Health Act 2007 s 222(7). As to the provision about annual reports see s 227.

20 'Prescribed provision' means provision prescribed or of a description prescribed by the regulations: Local Government and Public Involvement in Health Act 2007 s 223(3).



21 See the Local Government and Public Involvement in Health Act 2007 s 223(1). 'Local involvement network arrangements', in relation to arrangements made by a local authority, means arrangements which are made in pursuance of those arrangements, and under which a person is to carry on activities specified in heads (1)-(4) in the text: see s 223(3). As to the regulations made see the Local Involvement Networks Regulations 2008, SI 2008/528; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 398-399.

22 'Local involvement network' means a person who is to carry on activities specified in heads (1)-(4) in the text: Local Government and Public Involvement in Health Act 2007 s 223(3).

23 Local Government and Public Involvement in Health Act 2007 s 223(2)(a).

24 Local Government and Public Involvement in Health Act 2007 s 223(2)(b). As to the meaning of 'authorised representative' see PARA 528 note 4.

25 Local Government and Public Involvement in Health Act 2007 s 223(2)(c).

26 Local Government and Public Involvement in Health Act 2007 s 223(2)(d).

## **UPDATE**

### **526 Local involvement networks**

NOTE 2--As to the meaning of 'relevant time' see SI 2008/528 reg 7 (amended by SI 2008/1877).

NOTE 19--Local Government and Public Involvement in Health Act 2007 s 227 amended: Health and Social Care Act 2008 Sch 5 para 94.

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## **527. Duties of services-providers to respond to local involvement networks.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> impose, on a services-provider<sup>3</sup>, duties:

- 338 (1) as respects responding to requests for information made to the services-provider by a local involvement network<sup>4</sup>;
- 339 (2) as respects dealing with reports or recommendations made to the services-provider by a local involvement network<sup>5</sup>; or
- 340 (3) as respects dealing with reports or recommendations which, in accordance with any requirement imposed in regulations under head (2) above, have been referred to the services-provider by another services-provider<sup>6</sup>.

For these purposes, something is done by a local involvement network if it is done by a person who, in pursuance of arrangements made by a local authority<sup>7</sup>, is to carry on specified activities<sup>8</sup>, and it is done by that person in the carrying-on, under those arrangements, of activities so specified<sup>9</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 Before making such regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate: Local Government and Public Involvement in Health Act 2007 s 224(4). As to the meaning of 'person' see PARA 17 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627. As to the making of regulations see PARA 526 note 2. As to the regulations made see the Local Involvement Networks Regulations 2008, SI 2008/528; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 398-399.

3 'Services-provider' means a National Health Service trust, an NHS foundation trust, a primary care trust, a local authority, or a person prescribed by regulations made by the Secretary of State: Local Government and Public Involvement in Health Act 2007 ss 224(2), 225(7). As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to primary care trusts see PARA 111. As to the meaning of 'local authority' see PARA 526 note 1.

4 Local Government and Public Involvement in Health Act 2007 s 224(1)(a). As to local involvement networks see PARA 526.

5 Local Government and Public Involvement in Health Act 2007 s 224(1)(b).

6 Local Government and Public Involvement in Health Act 2007 s 224(1)(c).

7 Ie under the Local Government and Public Involvement in Health Act 2007 s 221(1): see PARA 526.

8 Local Government and Public Involvement in Health Act 2007 s 224(3)(a). Specified activities are those specified in s 221(2): see PARA 526.

9 Local Government and Public Involvement in Health Act 2007 s 224(3)(b).

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## **528. Duties of services-providers to allow entry by local involvement networks.**

The Secretary of State<sup>1</sup> must by regulations<sup>2</sup> make provision for the purpose of imposing, on a services-provider<sup>3</sup>, a duty to allow authorised representatives<sup>4</sup> to enter and view, and observe the carrying-on of activities on, premises owned or controlled by the services-provider<sup>5</sup>. The provision that may be made by such regulations includes (in particular): (1) providing for a duty to apply in relation to premises owned or controlled by a services-provider only if, or not to apply in relation to any such premises if, the premises are of a particular description<sup>6</sup>; (2) providing for a duty, so far as applying in relation to any premises, to apply in relation to activities carried on on the premises only if, or not to apply in relation to any such activities if, the activities are of a particular description<sup>7</sup>; (3) conditions to be satisfied before a duty arises in a particular case<sup>8</sup>; (4) provision limiting the extent of a duty, whether generally or in particular cases<sup>9</sup>; (5) provision imposing, or authorising the imposition of, conditions and restrictions<sup>10</sup> in relation to the authorised representative<sup>11</sup>; (6) provision as respects the authorisation of individuals for these purposes by a local involvement network<sup>12</sup>.

While an authorised representative is on any premises as a result of a services-provider having complied with a duty imposed under these provisions, any viewing, or observation, carried out by the representative must be carried out for the purposes of the carrying-on, under arrangements made by a local authority<sup>13</sup>, of specified activities<sup>14</sup>; and the representative must comply with any applicable conditions and restrictions imposed under these provisions for these purposes<sup>15</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the making of regulations see PARA 526 note 2. As to the regulations made see the Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008, SI 2008/915; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 398.

3 'Services-provider' means a National Health Service trust, an NHS foundation trust, a primary care trust, a local authority, or a person prescribed by regulations made by the Secretary of State: Local Government and Public Involvement in Health Act 2007 s 225(7). As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to primary care trusts see PARA 111. As to the meaning of 'local authority' see PARA 526 note 1. As to the meaning of 'person' see PARA 17 note 2.

4 'Authorised representative' means an individual authorised for these purposes, in accordance with any applicable provision in regulations under the Local Government and Public Involvement in Health Act 2007 s 225(1), by a local involvement network: s 225(5). 'Local involvement network' means a person who, in pursuance of arrangements made under s 221(1), is to carry on activities specified in s 221(2) (see PARA 526): s 225(6).

5 Local Government and Public Involvement in Health Act 2007 s 225(1).

6 Local Government and Public Involvement in Health Act 2007 s 225(2)(a).

7 Local Government and Public Involvement in Health Act 2007 s 225(2)(b).

8 Local Government and Public Involvement in Health Act 2007 s 225(2)(c).

9 Local Government and Public Involvement in Health Act 2007 s 225(2)(d). Provision such as is mentioned in s 225(2)(d) may limit a duty by (in particular): (1) providing for a duty not to apply to an authorised representative if he is, or unless he is, of a particular description (s 225(3)(a)); (2) limiting the number of authorised representatives to whom a duty applies in a particular case (s 225(3)(b)); (3) limiting the hours during which a duty applies (s 225(3)(c)).

10     le for the purposes of the Local Government and Public Involvement in Health Act 2007 s 225(4)(b): see the text to note 15.

11     Local Government and Public Involvement in Health Act 2007 s 225(2)(e).

12     Local Government and Public Involvement in Health Act 2007 s 225(2)(f).

13     le under the Local Government and Public Involvement in Health Act 2007 s 221(1): see PARA 526.

14     Local Government and Public Involvement in Health Act 2007 s 225(4)(a). The specified activities are those specified in s 221(2): see PARA 526.

15     Local Government and Public Involvement in Health Act 2007 s 225(4)(b).

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## (ii) Public Involvement and Consultation

### A. IN GENERAL

#### 529. Public involvement and consultation.

Until a day to be appointed the following provisions have effect<sup>1</sup>.

Each strategic health authority<sup>2</sup>, primary care trust<sup>3</sup>, NHS trust<sup>4</sup>, and NHS foundation trust<sup>5</sup>, must make arrangements with a view to securing, as respects health services for which it is responsible<sup>6</sup>, that persons to whom those services are being or may be provided are, directly or through representatives, involved in and consulted on<sup>7</sup>: (1) the planning of the provision of those services<sup>8</sup>; (2) the development and consideration of proposals for changes in the way those services are provided<sup>9</sup>; and (3) decisions to be made by that body affecting the operation of those services<sup>10</sup>.

1 The National Health Service Act 2006 s 242(1) is substituted, as from a day to be appointed, by s 242(1), (1A)-(1H) (see PARA 530) by the Local Government and Public Involvement in Health Act 2007, s 233(1), (2): s 245(5). At the date at which this volume states the law no such day had been appointed.

2 National Health Service Act 2006 s 242(1)(a). As to strategic health authorities see PARA 94 et seq. As to the equivalent provision to the National Health Service Act 2006 s 242 in relation to Wales see the National Health Service (Wales) Act 2006 s 183. As to the meaning of 'Wales' see PARA 6 note 2.

3 National Health Service Act 2006 s 242(1)(b). As to primary care trusts see PARA 111.

4 National Health Service Act 2006 s 242(1)(c). As to NHS trusts see PARA 155.

5 National Health Service Act 2006 s 242(1)(d). As to NHS foundation trusts see PARA 174.

6 For these purposes a body is responsible for health services: (1) if the body provides or will provide those services to individuals (National Health Service Act 2006 s 242(3)(a)); or (2) if another person provides, or will provide, those services to individuals at that body's direction (s 242(3)(b)(i)), on its behalf (s 242(3)(b)(ii)), or in accordance with an agreement or arrangements made by that body with that other person (s 242(3)(b)(iii)); and references in s 242 to the provision of services include references to the provision of services jointly with another person (s 242(3)). As to the meaning of 'person' see PARA 17 note 2. The duty to make arrangements for public involvement and consultation may arise even though any decision relating to the services concerned is not to be made by the body on whom this obligation is imposed: *R (on the application of Fudge) v South West Strategic Health Authority* [2007] EWCA Civ 803, (2007) 98 BMLR 112, [2007] All ER (D) 485 (Jul) (decided under the previous statutory provisions now consolidated in the National Health Service Act 2006 s 242).

7 The nature of the statutory duty is not to involve and consult but rather to 'make arrangements with a view to securing' those objectives. The use of different terms, involvement and consultation, means that something less than consultation may be appropriate in certain circumstances. The two concepts of involvement and consultation reflect the different stages at which the obligation imposed by the statutory provisions may be triggered. There is no warrant for construing the statutory duty as imposing an obligation to consult on each and every occasion; whether involvement or something more, namely consultation, is required, will depend upon the circumstances: *R (on the application of Fudge) v South West Strategic Health Authority* [2007] EWCA Civ 803, (2007) 98 BMLR 112, [2007] All ER (D) 485 (Jul) (decided under the previous statutory provisions now consolidated in the National Health Service Act 2006 s 242). See also *R (on the application of Legal Remedy UK Ltd) v Secretary of State for Health* [2007] EWHC 1252 (Admin), (2007) 96 BMLR 191.

8 National Health Service Act 2006 s 242(2)(a).

9 National Health Service Act 2006 s 242(2)(b).

10 National Health Service Act 2006 s 242(2)(c). The duty to consult is of high importance and the public expect to be involved in decisions by healthcare bodies. The closure of hospital wards without consultation was contrary to the duty imposed on such bodies: *R (on the application of Morris) v Trafford Healthcare NHS Trust* [2006] EWHC 2334 (Admin), [2006] Lloyd's Rep Med 529 (decided under the previous statutory provisions now consolidated in the National Health Service Act 2006 s 242). A decision to negotiate with a person as preferred bidder for the provision of health services was one on which consultation should have been carried out: *R (on the application of Smith) v North Eastern Derbyshire Primary Care Trust* [2006] EWHC 1338 (Admin), 90 BMLR 139 (decided under the previous statutory provisions now consolidated in the National Health Service Act 2006 s 242); revs'd on other grounds [2006] EWCA Civ 1291, [2006] 1 WLR 3315, (2006) Times, 11 September. See also *R (on the application of Bullmore) v West Hertfordshire Hospitals NHS Trust* [2007] All ER (D) 378 (Jun), in which it was held that the use of citizens' juries in a consultation process did not give rise to new legal questions, and whether a particular process was fair or unfair was likely to be highly fact sensitive. As to the exercise of the duty to consult generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

## **UPDATE**

### **529 Public involvement and consultation**

TEXT AND NOTE 1--Appointed day for commencement of 2007 Act s 233(1), (2) is 3 November 2008: SI 2008/2434.

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### **530. Duty to involve users of health services.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

Each relevant English body<sup>2</sup> must make arrangements, as respects health services for which it is responsible<sup>3</sup>, which secure that users<sup>4</sup> of those services, whether directly or through representatives, are involved (whether by being consulted or provided with information, or in other ways)<sup>5</sup> in: (1) the planning of the provision of those services<sup>6</sup>; (2) the development and consideration of proposals for changes in the way those services are provided<sup>7</sup>; and (3) decisions to be made by that body affecting the operation of those services<sup>8</sup>.

A relevant English body must have regard to any guidance given by the Secretary of State<sup>9</sup> as to the discharge of this duty<sup>10</sup>. The guidance includes (in particular): (a) guidance given by the Secretary of State as to when, or how often, involvement under such arrangements is to be carried out<sup>11</sup>; (b) guidance given by the Secretary of State as to the form to be taken by such involvement in any case specified by the guidance<sup>12</sup>.

Each relevant Welsh body must make arrangements with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are, directly or through representatives, involved in and consulted on<sup>13</sup>: (i) the planning of the provision of those services<sup>14</sup>; (ii) the development and consideration of proposals for changes in the way those services are provided<sup>15</sup>; and (iii) decisions to be made by that body affecting the operation of those services<sup>16</sup>.

1 As from a day to be appointed, the National Health Service Act 2006 s 242(1) is substituted, (1A)-(1H) are added, by the Local Government and Public Involvement in Health Act 2007 s 233(1), (2), and the National Health Service Act 2006 s 242(2) is amended by the Local Government and Public Involvement in Health Act 2007 s 233(1), (3): see s 245(5). At the date at which this volume states the law no such day had been appointed.

2 'Relevant English body' means a strategic health authority, a primary care trust, an NHS trust that is not a relevant Welsh body, or an NHS foundation trust: National Health Service Act 2006 s 242(1), (1A) (s 242(1) as substituted, (1A) as added: see note 1). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. 'Relevant Welsh body' means an NHS trust all or most of whose hospitals, establishments and facilities are in Wales: s 242(1) (as so substituted), (1A) (as so added). As to the meaning of 'hospital' see PARA 12 note 4. As to the meaning of 'facilities' see para 12 note 7. As to the meaning of 'Wales' see PARA 6 note 2.

3 As to the meaning of 'health services for which it is responsible' see PARA 529 note 6.

4 A person is a 'user' of any health services if the person is someone to whom those services are being or may be provided: National Health Service Act 2006 s 242(1F) (as added: see note 1). As to the meaning of 'person' see PARA 17 note 2.

5 See the cases cited in the notes to PARA 529.

6 National Health Service Act 2006 s 242(1B)(a) (as added: see note 1).

7 National Health Service Act 2006 s 242(1B)(b) (as added: see note 1). This provision applies to a proposal only if implementation of the proposal would have an impact on: (1) the manner in which the services are delivered to users of those services (s 242(1C)(a) (as so added)); or (2) the range of health services available to those users (s 242(1C)(b) (as so added)). The reference in head (1) above to the delivery of services is to their delivery at the point when they are received by users: s 242(1E) (as so added).

8 National Health Service Act 2006 s 242(1B)(c) (as added: see note 1). This provision applies to a decision only if implementation of the decision (if made) would have an impact on: (1) the manner in which the services are delivered to users of those services (s 242(1D)(a) (as so added)); or (2) the range of health services available to those users (s 242(1D)(b) (as so added)). The reference in head (1) above to the delivery of services is to their delivery at the point when they are received by users: s 242(1E) (as so added).

9 As to the Secretary of State see PARA 6 note 8.

10 National Health Service Act 2006 s 242(1G) (as added: see note 1).

11 National Health Service Act 2006 s 242(1H)(a) (as added: see note 1).

12 National Health Service Act 2006 s 242(1H)(b) (as added: see note 1).

13 National Health Service Act 2006 s 242(2) (as amended: see note 1).

14 National Health Service Act 2006 s 242(2)(a).

15 National Health Service Act 2006 s 242(2)(b).

16 National Health Service Act 2006 s 242(2)(c).

## **UPDATE**

### **530 Duty to involve users of health services**

TEXT AND NOTES--National Health Service Act 2006 s 242(6) added: Health Service Act 2009 s 18(7).

TEXT AND NOTE 1--Appointed day for commencement of 2007 Act s 233(1)-(3) is 3 November 2008: SI 2008/2434.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(9) PUBLIC INVOLVEMENT AND SCRUTINY/(ii) Public Involvement and Consultation/A. IN GENERAL/531. Directions as to public involvement and consultation.

### **531. Directions as to public involvement and consultation.**

A strategic health authority<sup>1</sup> may give directions<sup>2</sup> to primary care trusts<sup>3</sup> any part of whose area falls within the strategic health authority's area<sup>4</sup>, and NHS trusts<sup>5</sup> which provide services at or from a hospital<sup>6</sup> or other establishment or facility which falls within the authority's area<sup>7</sup>, as to the arrangements which they are to make for securing public involvement<sup>8</sup> in relation to health services for which the authority is not responsible<sup>9</sup>, but which are or will be provided to individuals in the authority's area and for which<sup>10</sup> such a primary care trust or NHS trust is responsible<sup>11</sup>.

1 As to strategic health authorities see PARA 94 et seq.

2 Such directions must be given by an instrument in writing: see the National Health Service Act 2006 s 273(3); and PARA 9. As to the meaning of 'writing' see PARA 7 note 2.

3 As to primary care trusts see PARA 111.

4 See the National Health Service Act 2006 s 242(4)(a), (5).

5 As to NHS trusts see PARA 155.

6 As to the meaning of 'hospital' see PARA 12 note 4.

7 See the National Health Service Act 2006 s 242(4)(b), (5).

8 Ie under the National Health Service Act 2006 s 242(2) (see PARA 529): s 242(5). As from a day to be appointed this provision is amended so as to refer to arrangements made under s 242 (see PARA 530): s 242(5) prospectively amended by the Local Government and Public Involvement in Health Act 2007 s 233(1), (4)). At the date at which this volume states the law no such day had been appointed.

9 Ie by virtue of the National Health Service Act 2006 s 242(3): see PARA 529 note 6.

10 Ie by virtue of the National Health Service Act 2006 s 242(3): see PARA 529 note 6.

11 See the National Health Service Act 2006 s 242(4), (5).

### **UPDATE**

### **531 Directions as to public involvement and consultation**

NOTE 8--Appointed day for commencement of 2007 Act s 233(1), (4) is 3 November 2008: SI 2008/2434.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(9) PUBLIC INVOLVEMENT AND SCRUTINY/(ii) Public Involvement and Consultation/A. IN GENERAL/532. Strategic health authorities: further duty to involve users.

### **532. Strategic health authorities: further duty to involve users.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> must by regulations<sup>3</sup> require each strategic health authority<sup>4</sup> to make arrangements which secure that health service users<sup>5</sup> are, directly or through representatives, involved (whether by being consulted or provided with information, or in other ways) in prescribed matters<sup>6</sup>. A strategic health authority must have regard to any guidance given by the Secretary of State as to the discharge of the authority's duty under such regulations<sup>7</sup>. The guidance includes (in particular): (1) guidance given by the Secretary of State as to when, or how often, involvement under arrangements under the regulations is to be carried out<sup>8</sup>; (2) guidance given by the Secretary of State as to the form to be taken by such involvement in any case specified by the guidance<sup>9</sup>.

1 As from a day to be appointed, the National Health Service Act 2006 s 242A is added by the Local Government and Public Involvement in Health Act 2007 s 233(5): see s 245(5). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

4 As to strategic health authorities see PARA 94 et seq.

5 'Health service users' means persons to whom health services are being or may be provided in the area of the strategic health authority: National Health Service Act 2006 s 242A(2) (as added: see note 1). As to the meaning of 'person' see PARA 17 note 2.

6 National Health Service Act 2006 s 242A(1) (as added: see note 1). 'Prescribed' means prescribed by regulations: s 275(1). Any duty of a strategic health authority under regulations under s 242A is in addition to the authority's duty under s 242(1B) (see PARA 530): s 242A(5) (as so added).

7 National Health Service Act 2006 s 242A(3) (as added: see note 1).

8 National Health Service Act 2006 s 242A(4)(a) (as added: see note 1).

9 National Health Service Act 2006 s 242A(4)(b) (as added: see note 1).

### **UPDATE**

### **532-533 Strategic health authorities: further duty to involve users, Directions in case where strategic health authorities arrange involvem**

These provisions have effect as from 22 February 2010: SI 2010/112.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(9) PUBLIC INVOLVEMENT AND SCRUTINY/(ii) Public Involvement and Consultation/A. IN GENERAL/533. Directions in case where strategic health authorities arrange involvement.

### **533. Directions in case where strategic health authorities arrange involvement.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> may make regulations<sup>3</sup> enabling a strategic health authority<sup>4</sup>, in specified circumstances, to direct a primary care trust<sup>5</sup> that persons<sup>6</sup> who would otherwise be involved in a particular matter under arrangements made by the primary care trust<sup>7</sup> are not to be involved in that matter under those arrangements<sup>8</sup>. The specified circumstances are where the persons concerned are to be involved (whether by the strategic health authority, by the strategic health authority and the primary care trust acting jointly, or otherwise) under arrangements made or to be made by the strategic health authority<sup>9</sup>. The regulations may include provision: (1) for the consequences of compliance with a direction, including provision that a primary care trust is not to be taken to have failed to comply with its duty to make arrangements for public involvement<sup>10</sup> by reason of compliance with a direction<sup>11</sup>; (2) enabling a direction to be given where involvement under arrangements made by the primary care trust has already begun, and as to the provision that may be made by the direction in such a case<sup>12</sup>; (3) requiring prescribed<sup>13</sup> information to be provided by a primary care trust to a strategic health authority<sup>14</sup>; (4) requiring prescribed information to be provided by a strategic health authority to a primary care trust<sup>15</sup>; (5) enabling a strategic health authority to direct a primary care trust to act jointly with the strategic health authority in carrying out involvement<sup>16</sup>.

1 As from a day to be appointed, the National Health Service Act 2006 s 242B is added by the Local Government and Public Involvement in Health Act 2007 s 233(5): see s 245(5). At the date at which this volume states the law no such day had been appointed.

2 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

3 As to the making of regulations see PARA 9. At the date at which this volume states the law no such regulations had been made.

4 As to strategic health authorities see PARA 94 et seq.

5 As to primary care trusts see PARA 111.

6 As to the meaning of 'person' see PARA 17 note 2.

7 Ie under the National Health Service Act 2006 s 242: see PARA 529.

8 National Health Service Act 2006 s 242B(1) (as added: see note 1).

9 National Health Service Act 2006 s 242B(2) (as added: see note 1). As to the duty of strategic health authorities to make arrangements for public involvement and consultation see PARAS 529, 532.

10 Ie its duty under the National Health Service Act 2006 s 242(1B): see PARA 530.

11 National Health Service Act 2006 s 242B(3)(a) (as added: see note 1).

12 National Health Service Act 2006 s 242B(3)(b) (as added: see note 1).

13 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1).

14 National Health Service Act 2006 s 242B(3)(c) (as added: see note 1).

15 National Health Service Act 2006 s 242B(3)(d) (as added: see note 1).

16 National Health Service Act 2006 s 242B(3)(e) (as added: see note 1).

## **UPDATE**

### **532-533 Strategic health authorities: further duty to involve users, Directions in case where strategic health authorities arrange involvemen**

These provisions have effect as from 22 February 2010: SI 2010/112.

### **533 Directions in case where strategic health authorities arrange involvement**

TEXT AND NOTES--As to regulations so made see the National Health Service (Directions by Strategic Health Authorities to Primary Care Trusts Regarding Arrangements for Involvement) (No 2) Regulations 2008, SI 2008/2677.

TEXT AND NOTE 1--Appointed day is 26 September 2008 for the purpose of making regulations and 3 November 2008 for remaining purposes: SI 2008/2434.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(9) PUBLIC INVOLVEMENT AND SCRUTINY/(ii) Public Involvement and Consultation/A. IN GENERAL/534. Wales.

### **534. Wales.**

Each community health council must represent the interests in the health service<sup>1</sup> of the public in its district<sup>2</sup>. Each local health board<sup>3</sup> must make arrangements with a view to securing, as respects health services for which it is responsible<sup>4</sup>, that persons to whom those services are being or may be provided are, directly or through representatives, involved in and consulted on: (1) the planning of the provision of those services<sup>5</sup>; (2) the development and consideration of proposals for changes in the way those services are provided<sup>6</sup>; and (3) decisions to be made by the local health board affecting the operation of those services<sup>7</sup>.

1 'Health service' means the health service continued under the National Health Service (Wales) Act 2006 s 1(1) and under the National Health Service Act 2006 s 1(1) (see PARA 10): National Health Service (Wales) Act 2006 s 206(1).

2 National Health Service (Wales) Act 2006 Sch 10 para 1(a).

3 As to local health boards see PARA 75.

4 A local health board is responsible for health services: (1) if it provides or will provide those services to individuals (National Health Service (Wales) Act 2006 s 183(2)(a)); or (2) if another person provides, or will provide, those services to individuals at the local health board's direction, on its behalf, or in accordance with an agreement or arrangements made by the local health board with that other person (s 183(2)(b)). References to the provision of services include references to the provision of services jointly with another person: s 183(2). As to the meaning of 'person' see PARA 17 note 2.

5 National Health Service (Wales) Act 2006 s 183(1)(a).

6 National Health Service (Wales) Act 2006 s 183(1)(b).

7 National Health Service (Wales) Act 2006 s 183(1)(c). See also the cases cited in the notes to PARA 529.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(9) PUBLIC INVOLVEMENT AND SCRUTINY/(ii) Public Involvement and Consultation/B. THE COMMISSION FOR PATIENT AND PUBLIC INVOLVEMENT IN HEALTH/535. Commission for Patient and Public Involvement in Health.

## ***B. THE COMMISSION FOR PATIENT AND PUBLIC INVOLVEMENT IN HEALTH***

### **535. Commission for Patient and Public Involvement in Health.**

As from 30 June 2008 the Commission for Patient and Public Involvement in Health is abolished<sup>1</sup>. The Commission for Patient and Public Involvement in Health has the following functions:

- 341 (1) advising the Secretary of State<sup>2</sup>, and such bodies as may be prescribed<sup>3</sup>, about arrangements for public involvement in, and consultation on, matters relating to the health service<sup>4</sup> in England<sup>5</sup>;
- 342 (2) advising the Secretary of State, and such bodies as may be prescribed, about arrangements for the provision in England of independent advocacy services<sup>6</sup>;
- 343 (3) representing to the Secretary of State and such bodies as may be prescribed, and advising him and them on, the views, as respects the arrangements referred to in heads (1) and (2) above, of patients' forums<sup>7</sup> and those voluntary organisations<sup>8</sup> and other bodies appearing to the Commission to represent the interests of patients<sup>9</sup> of the health service in England and their carers<sup>10</sup>;
- 344 (4) advising and assisting providers of independent advocacy services in England<sup>11</sup>;
- 345 (5) setting quality standards relating to any aspect of the services provided by independent advocacy services in England, and monitoring how successfully they meet those standards, and making recommendations to them about how to improve their performance against those standards<sup>12</sup>;
- 346 (6) such other functions in relation to England as may be prescribed<sup>13</sup>.

It is also the function of the Commission: (a) to promote the involvement of members of the public in England in consultations or processes leading (or potentially leading) to decisions by specified bodies<sup>14</sup> or the formulation of policies by them, which would or might affect (whether directly or not) the health of those members of the public<sup>15</sup>; (b) to review the annual reports of patients' forums<sup>16</sup>, and to make, to the Secretary of State or to such other persons<sup>17</sup> or bodies as the Commission considers appropriate, such reports or recommendations as the Commission considers appropriate concerning any matters arising from those annual reports<sup>18</sup>.

If the Commission becomes aware in the course of exercising its functions of any matter connected with the health service in England which in its opinion gives rise to concerns about the safety or welfare of patients<sup>19</sup>, and is not satisfied that the matter is being dealt with, or about the way it is being dealt with<sup>20</sup>, the Commission must report the matter to whichever person or body it considers most appropriate (or, if it considers it appropriate to do so, to more than one person or body)<sup>21</sup>.

1 The National Health Service Act 2006 s 243, Sch 16 are repealed by the Local Government and Public Involvement in Health Act 2007 ss 232(1), 241, Sch 18 Pt 18 on 30 June 2008: see the Local Government and Public Involvement in Health Act 2007 (Commencement No 4) Order 2008, SI 2008/461, art 2(3), (4), Schedule. As to the status, constitution and procedure of the Commission for Patient and Public Involvement in Health see

the National Health Service Act 2006 Sch 16 (as so prospectively repealed), and the Commission for Patient and Public Involvement in Health (Membership and Procedure) Regulations 2002, SI 2002/3038.

As from 30 June 2008 the property, rights and liabilities of the Commission are transferred to the Secretary of State for Health (including any property, rights and liabilities that would not otherwise be capable of being transferred) (Local Government and Public Involvement in Health Act 2007 ss 232(2), 245(5)); and any legal proceedings relating to anything so transferred may be continued by or in relation to the Secretary of State for Health (ss 232(3), 245(5)). As to the Secretary of State for Health see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 464.

2 As to the Secretary of State see PARA 6 note 8.

3 'Prescribed' means prescribed by regulations: National Health Service Act 2006 s 275(1). As to the meaning of 'regulations' see para 7 note 2. As to the prescribed bodies see the Commission for Patient and Public Involvement in Health (Functions) Regulations 2002, SI 2002/3007, reg 3 (amended by SI 2004/664).

4 'Health service' includes services provided in pursuance of arrangements under regulations under the National Health Service Act 2006 s 75 (see PARA 233) in relation to the exercise of health-related functions of a local authority: s 243(12) (as prospectively repealed: see note 1). As to the meaning of 'health service' generally see para 10 note 3.

5 National Health Service Act 2006 s 243(2)(a) (as prospectively repealed: see note 1). As to the meaning of 'England' see para 6 note 2.

6 National Health Service Act 2006 s 243(2)(b) (as prospectively repealed: see note 1). As to the prescribed bodies see the Commission for Patient and Public Involvement in Health (Functions) Regulations 2002, SI 2002/3007, reg 4 (amended by SI 2003/497; SI 2004/664). As to independent advocacy services see para 597.

7 Patients' forums are now abolished.

8 As to the meaning of 'voluntary organisation' see para 17 note 3.

9 'Patient' includes a person who receives services provided in pursuance of arrangements under the National Health Service Act 2006 s 75 (see para 233) in relation to the exercise of health-related functions of a local authority: s 237(9); definition applied by s 243(12) (as prospectively repealed: see note 1).

10 National Health Service Act 2006 s 243(2)(c) (as prospectively repealed: see note 1). As to the prescribed bodies see the Commission for Patient and Public Involvement in Health (Functions) Regulations 2002, SI 2002/3007, reg 5 (amended by SI 2003/497; SI 2004/664). 'Carer', in relation to a patient, means a person who provides care for the patient, but who is not employed to do so by any body in the exercise of its functions under any enactment: National Health Service Act 2006 s 237(9); definition applied by s 243(12) (as so prospectively repealed).

11 National Health Service Act 2006 s 243(2)(e) (as prospectively repealed: see note 1).

12 National Health Service Act 2006 s 243(2)(f) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 18 Pt 18; and as prospectively repealed: see note 1).

13 National Health Service Act 2006 s 243(2)(g) (as prospectively repealed: see note 1). As to the prescribed functions see the Commission for Patient and Public Involvement in Health (Functions) Regulations 2002, SI 2002/3007, regs 1, 6 (reg 1 added by SI 2003/2044).

14 The decisions in question are those made by health service bodies, other public bodies, and others providing services to the public or a section of the public: National Health Service Act 2006 s 243(4) (as prospectively repealed: see note 1). 'Health service bodies' means strategic health authorities, primary care trusts, NHS trusts and NHS foundation trusts: s 243(12) (as so prospectively repealed). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174.

15 National Health Service Act 2006 s 243(3) (as prospectively repealed: see note 1).

16 National Health Service Act 2006 s 243(5)(a) (as prospectively repealed: see note 1).

17 As to the meaning of 'person' see para 17 note 2.

18 National Health Service Act 2006 s 243(5)(b) (as prospectively repealed: see note 1).

19 National Health Service Act 2006 s 243(6)(a) (as prospectively repealed: see note 1).

20 National Health Service Act 2006 s 243(6)(b) (as prospectively repealed: see note 1).

21 National Health Service Act 2006 s 243(6) (as prospectively repealed: see note 1). Bodies to whom the Commission might report a matter include the regulatory body for the profession of a person working in the health service, and the Commission for Healthcare Audit and Inspection: s 243(7) (as so prospectively repealed). As to the Commission for Healthcare Audit and Inspection see para 552.



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### **(iii) Overview and Scrutiny Committees**

#### **A. IN GENERAL**

#### **536. Overview and scrutiny committees.**

Regulations<sup>1</sup> may, in relation to an overview and scrutiny committee<sup>2</sup> of a local authority<sup>3</sup>, make provision:

- 347 (1) as to matters relating to the health service<sup>4</sup> in the authority's area which the committee may review and scrutinise<sup>5</sup>;
- 348 (2) as to matters relating to the health service in the authority's area on which the committee may make reports and recommendations to local NHS bodies<sup>6</sup>, the Secretary of State<sup>7</sup> or the regulator<sup>8</sup>;
- 349 (3) as to matters on which local NHS bodies must consult the committee in accordance with the regulations (including provision as to circumstances in which the Secretary of State or the regulator may require consultation on those matters in accordance with the regulations)<sup>9</sup>;
- 350 (4) as to information which local NHS bodies must provide to the committee<sup>10</sup>;
- 351 (5) as to information which may not be disclosed by a local NHS body to the committee<sup>11</sup>;
- 352 (6) requiring any officer<sup>12</sup> of a local NHS body to attend before the committee to answer questions<sup>13</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2) the following regulations have effect under the National Health Service Act 2006 s 244: the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048 (see PARA 537, 541 et seq); the Strategic Health Authorities (Consultation on Changes) Regulations 2003, SI 2003/1617 (see PARA 94).

2 References in the National Health Service Act 2006 s 244(2), (3) (see note 6) to an overview and scrutiny committee include references to a joint overview and scrutiny committee: s 245(5). As to joint overview and scrutiny committees see PARA 537. As to the duty on local authorities to establish overview and scrutiny committees see **LOCAL GOVERNMENT** vol 69 (2009) PARA 342.

3 The National Health Service Act 2006 s 244 applies to any local authority, except that it applies to the council of a district only where the district is comprised in an area for which there is no county council: s 244(1). As to the meaning of 'local authority' see PARA 17 note 3. As to local government areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the application to the Common Council of the City of London of the provisions relating to overview and scrutiny committees see PARA 540. As to the equivalent provision to the National Health Service Act 2006 s 244 in relation to Wales see the National Health Service (Wales) Act 2006 s 184. As to the meaning of 'Wales' see PARA 6 note 2.

4 'Health service' includes services provided in pursuance of arrangements under regulations under the National Health Service Act 2006 s 75 (see PARA 233) in relation to the exercise of health-related functions of a local authority: s 244(4). As to the meaning of 'health service' generally see PARA 10 note 3.

5 National Health Service Act 2006 s 244(2)(a).

6 'Local NHS body', in relation to an overview and scrutiny committee, means an NHS body, other than a special health authority, which is prescribed for those purposes in relation to the committee: National Health Service Act 2006 s 244(3). As to the meaning of 'NHS body' see PARA 8 note 2. As to special health authorities see PARA 136. 'Prescribed' means prescribed by regulations: s 275(1).

- 7 As to the Secretary of State see PARA 6 note 8.
- 8 National Health Service Act 2006 s 244(2)(b). As to the meaning of 'regulator' see PARA 188 note 1.
- 9 National Health Service Act 2006 s 244(2)(c).
- 10 National Health Service Act 2006 s 244(2)(d).
- 11 National Health Service Act 2006 s 244(2)(e).
- 12 As to the meaning of 'officer' see PARA 28 note 5.
- 13 National Health Service Act 2006 s 244(2)(f).

## **UPDATE**

### **536 Overview and scrutiny committees**

TEXT AND NOTES 10, 11--In the National Health Service Act 2006 s 244(2)(d), (e), references to information are to information relating to matters relating to the health service in the authority's area: National Health Service Act 2006 s 244(2A) (added by Local Government and Public Involvement in Health Act 2007 s 121(4)) (in force 1 April 2009: SI 2008/3110).

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### 537. Joint overview and scrutiny committees.

Regulations<sup>1</sup> may make provision under which: (1) two or more local authorities<sup>2</sup> may appoint a joint committee of those authorities (known as a 'joint overview and scrutiny committee') and arrange for relevant functions<sup>3</sup> in relation to any (or all) of those authorities to be exercisable by the committee<sup>4</sup>; (2) a local authority may arrange for relevant functions in relation to that authority to be exercisable by an overview and scrutiny committee of another local authority<sup>5</sup>; (3) a county council for any area may arrange for one or more of the members of an overview and scrutiny committee of the council for a district comprised in that area to be appointed as (a) a member of an overview and scrutiny committee of the county council<sup>6</sup> or another local authority, for the purposes of relevant functions of the committee in relation to the county council<sup>7</sup>; or (b) a member of an overview and scrutiny committee of the county council, for the purposes of relevant functions of the committee in relation to another local authority<sup>8</sup>.

The regulations may in particular: (i) provide for arrangements to be made only in specified circumstances, or subject to specified conditions or limitations<sup>9</sup>; (ii) in relation to joint overview and scrutiny committees, make provision applying, or corresponding to, certain statutory provisions<sup>10</sup>, with or without modifications<sup>11</sup>. The regulations may require, or enable the Secretary of State to direct, a local authority to make arrangements of any description within heads (1) to (3) above<sup>12</sup>, and to comply with such requirements in connection with the arrangements as may be specified in the regulations or as the Secretary of State may direct<sup>13</sup>.

Two or more local authorities<sup>14</sup> may appoint a joint overview and scrutiny committee<sup>15</sup> of those authorities and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the joint committee subject to such terms and conditions as the authorities may consider appropriate<sup>16</sup>. A joint overview and scrutiny committee may not discharge any functions other than relevant functions exercised by it by virtue of such arrangements<sup>17</sup>.

1 As to the meaning of 'regulations' see PARA 7 note 2. As to the making of regulations see PARA 9. By virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2), the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048 (see the text to notes 14-15) have effect under the National Health Service Act 2006 s 245.

2 'Local authority' does not include the Common Council of the City of London: National Health Service Act 2006 s 245(9). As to the meaning of 'local authority' generally see PARA 17 note 3. As to the application to the Common Council of the City of London of the provisions relating to overview and scrutiny committees see PARA 540.

3 'Relevant functions': (1) in relation to a local authority operating executive arrangements under the Local Government Act 2000 Pt 2 (ss 10-48) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 303 et seq), are functions which are, or, but for regulations under the National Health Service Act 2006 s 245, would be, exercisable under the Local Government Act 2000 s 21(2)(f) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 342) by an overview and scrutiny committee of that authority (National Health Service Act 2006 s 245(1)(a)); and (2) in relation to a local authority operating alternative arrangements under the Local Government Act 2000 Pt 2, are any corresponding functions which are, or, but for regulations under the National Health Service Act 2006 s 245, would be, exercisable by a committee of the authority falling within the Local Government Act 2000 s 32(1)(b) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 364) (National Health Service Act 2006 s 245(1)(b)); and references to an overview and scrutiny committee include references to a committee falling within the Local Government Act 2000 s 32(1)(b) (National Health Service Act 2006 s 245(1)). The Local Government Act 2000 s 21(4) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 342) does not apply to the discharge of functions by virtue of arrangements under regulations under the National Health Service Act 2006 s 245(2): s 245(7).

4 National Health Service Act 2006 s 245(2)(a). As to the equivalent provision to the National Health Service Act 2006 s 245 in relation to Wales see the National Health Service (Wales) Act 2006 s 185. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 s 245(2)(b).

6 In the National Health Service Act 2006 s 245(2)(c), references to an overview and scrutiny committee of a county council include references to a joint overview and scrutiny committee of the council and another local authority: s 245(6). The Local Government Act 2000 s 21(10) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 345) does not apply to persons who are members of an overview and scrutiny committee by virtue of arrangements under regulations under the National Health Service Act 2006 s 245(2)(c): s 245(8).

7 National Health Service Act 2006 s 245(2)(c)(i).

8 National Health Service Act 2006 s 245(2)(c)(ii).

9 National Health Service Act 2006 s 245(3)(a).

10 In any provision of the Local Government Act 2000 s 21(4), (6)-(15) (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 342-346), or the National Health Service Act 2006 s 246 (see PARA 538) and Sch 17 (see PARA 539) and the National Health Service (Wales) Act 2006 Sch 11 (see PARA 539): National Health Service Act 2006 s 245(3)(b)(i), (ii).

11 National Health Service Act 2006 s 245(3)(b). As to the meaning of 'modifications' see PARA 45 note 14.

12 National Health Service Act 2006 s 245(4)(a).

13 National Health Service Act 2006 s 245(4)(b).

14 In the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, regs 7-10, 'local authority' means a local authority to which the National Health Service Act 2006 s 245 (see note 2) applies, the Common Council for the City of London and the Council of the Isles of Scilly: Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 1(3) (definition amended by SI 2004/1427); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

15 'Joint overview and scrutiny committee' means a committee appointed under the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 7(1): reg 1(3).

16 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 7(1). The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, apply in England only: reg 1(2). At the date at which this volume states the law no equivalent regulations had been made in relation to Wales. As to the meaning of 'England' see PARA 6 note 2.

17 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 7(2). Provision is made for the provisions of the Local Government Act 2000 s 21(6)-(15) (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 344-346) to apply, with modifications, to a joint overview and scrutiny committee as they apply to an overview and scrutiny committee: see the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 7(3). The National Health Service Act 2006 s 246 (see PARA 538) and Sch 17 (see PARA 539) apply to a joint overview and scrutiny committee: Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 7(4).

## UPDATE

### 537 Joint overview and scrutiny committees

NOTE 4--National Health Service (Wales) Act 2006 s 185 amended: Local Government and Public Involvement in Health Act 2007 s 127(4) (in force 1 April 2009: SI 2008/3110).

TEXT AND NOTES 10, 11--National Health Service Act 2006 s 245(3)(b) amended: Local Government and Public Involvement in Health Act 2007 s 127(3) (in force 1 April 2009: SI 2008/3110).



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### **538. Exempt information.**

In relation to any item of business at a meeting of an overview and scrutiny committee<sup>1</sup> which is an item relating to functions<sup>2</sup> of the committee<sup>3</sup> in respect of the review and scrutiny of matters relating to the health service<sup>4</sup>, information is exempt information<sup>5</sup> if it falls within any of the specified descriptions of information<sup>6</sup>. The Secretary of State<sup>7</sup> may by order<sup>8</sup> vary any of the specified descriptions of information<sup>9</sup>: (1) by adding any description or other provision in connection with a relevant body<sup>10</sup> or services provided by, or under arrangements made by, a relevant body<sup>11</sup>; or (2) by deleting or varying any description or other provision<sup>12</sup>.

1 As to overview and scrutiny committees see PARA 536. As to joint overview and scrutiny committees see PARA 537.

2 As to the meaning of 'functions' see PARA 6 note 3.

3 Ie under the Local Government Act 2000 s 21(2)(f): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 342.

4 National Health Service Act 2006 s 246(1). As to the meaning of 'health service' see PARA 10 note 3. As to the equivalent provision to the National Health Service Act 2006 s 246 in relation to Wales see the National Health Service (Wales) Act 2006 s 186. As to the meaning of 'Wales' see PARA 6 note 2.

5 Ie for the purposes of the Local Government Act 1972 s 100A(4) (exclusion of public from meetings to prevent disclosure of exempt information): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 661.

6 National Health Service Act 2006 s 246(2). The specified descriptions of information are those specified in Sch 17, or in the National Health Service (Wales) Act 2006 Sch 11: see PARA 539.

7 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

8 The Secretary of State may exercise the power conferred by the National Health Service Act 2006 s 246(3) by amending any Part of Sch 17 (see PARA 539), with or without amendment of any other Part: s 246(4). As to the making of orders see PARA 9. At the date at which this volume states the law no such order had been made.

9 Ie in the National Health Service Act 2006 Sch 17: see PARA 539.

10 'Relevant body' means a body in respect of which overview and scrutiny committees exercise functions under regulations under the National Health Service Act 2006 s 244 (see PARA 536): s 246(5).

11 National Health Service Act 2006 s 246(3)(a).

12 See the National Health Service Act 2006 s 246(3)(b).

## **UPDATE**

### **538 Exempt information**

TEXT AND NOTE 11--After 'a relevant body,' read 'or services in respect of which direct payments under the National Health Service Act 2006 s 12A(1), or under regulations under s 12A(4), are made by a relevant body,': National Health Service Act 2006 s 246(3)(b) (amended by the Health Act 2009 Sch 1 para 9).

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### **539. Descriptions of exempt information.**

The following information is exempt information for the purposes of an item of business at a meeting of an overview and scrutiny committee<sup>1</sup>:

- 353 (1) information relating to a particular employee<sup>2</sup>, former employee or applicant to become an employee of, or a particular office-holder<sup>3</sup>, former office-holder or applicant to become an office-holder under, a relevant body<sup>4</sup>;
- 354 (2) information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of a relevant body<sup>5</sup>;
- 355 (3) information relating to any particular applicant for, or recipient or former recipient of, any service provided by a relevant body<sup>6</sup>;
- 356 (4) information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by a relevant body<sup>7</sup>;
- 357 (5) the amount of any expenditure proposed to be incurred by a relevant body under any particular contract for the acquisition of property or the supply of goods<sup>8</sup> and services<sup>9</sup>;
- 358 (6) any terms proposed or to be proposed by or to a relevant body in the course of negotiations for a contract for the acquisition or disposal<sup>10</sup> of property or the supply of goods or services<sup>11</sup>;
- 359 (7) the identity of a relevant body (as well as of any other person, by virtue of head (6) above) as the person offering any particular tender for a contract for the supply of goods or services<sup>12</sup>;
- 360 (8) information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter<sup>13</sup> arising between a relevant body or a Minister of the Crown and employees of, or office-holders under, a relevant body<sup>14</sup>;
- 361 (9) any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with (a) any legal proceedings by or against a relevant body<sup>15</sup>; or (b) the determination of any matter affecting a relevant body<sup>16</sup> (whether, in either case, proceedings have been commenced or are in contemplation)<sup>17</sup>;
- 362 (10) information relating to a particular person who was included in a list of persons undertaking<sup>18</sup> to provide services<sup>19</sup>;
- 363 (11) information relating to a particular person who is, or was formerly, included in, or is an applicant for inclusion in a pharmaceutical list<sup>20</sup>, or a pharmaceutical list or ophthalmic list under the National Health Service (Wales) Act 2006<sup>21</sup>;
- 364 (12) information relating to a particular person who provided<sup>22</sup> primary medical services, primary dental services or primary ophthalmic services<sup>23</sup>, or was included in a list<sup>24</sup> of persons performing primary medical or dental services<sup>25</sup>;
- 365 (13) information relating to a particular person who is, or was formerly, providing<sup>26</sup> primary medical services, primary dental services<sup>27</sup> or primary ophthalmic services<sup>28</sup>; or is, or was formerly, included in, or is an applicant for inclusion in, a list<sup>29</sup> of persons performing such services or local pharmaceutical services<sup>30</sup>;

- 366 (14) information relating to any particular employee, former employee, or applicant to become an employee, of a person referred to in head (10), (11), (12) or (13) above<sup>31</sup>;
- 367 (15) information relating to the physical or mental health of a particular individual<sup>32</sup>.

Information relating to a person of a description specified in any of heads (1) to (4) and (10) to (14) above is not exempt information by virtue of that provision unless it relates to an individual of that description in the capacity indicated by the description<sup>33</sup>. Information falling within head (5) above is exempt information if and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into, a contract with a relevant body in respect of the property, goods or services, whether the advantage would arise as against that body or as against other such persons<sup>34</sup>. Information falling within head (6) above is exempt information if and so long as disclosure to the public of the terms would prejudice a relevant body in those or any other negotiations concerning the property or goods or services<sup>35</sup>. Information falling within head (8) above is exempt information if and so long as disclosure to the public of the information would prejudice a relevant body in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that provision<sup>36</sup>.

1 As to exempt information and as to the power of the Secretary of State to vary the provisions of the National Health Service Act 2006 Sch 17 see PARA 539. As to overview and scrutiny committees see PARA 536. As to joint overview and scrutiny committees see PARA 537. As to the Secretary of State see PARA 6 note 8.

2 'Employee' means a person employed under a contract of service: National Health Service Act 2006 Sch 17 para 20. As to the meaning of 'person' see PARA 17 note 2. As to contracts of employment see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.

3 'Office-holder', in relation to a relevant body, means the holder of any paid office appointments to which are or may be made or confirmed by the body or by any person who holds any such office or is an employee of the body: National Health Service Act 2006 Sch 17 para 20. As to the meaning of 'relevant body' see PARA 538 note 10.

4 National Health Service Act 2006 Sch 17 para 1. As to the equivalent provision to the National Health Service Act 2006 Sch 17 in relation to Wales see the National Health Service (Wales) Act 2006 Sch 11. As to the meaning of 'Wales' see PARA 6 note 2.

5 National Health Service Act 2006 Sch 17 para 2.

6 National Health Service Act 2006 Sch 17 para 3.

7 National Health Service Act 2006 Sch 17 para 4.

8 As to the meaning of 'goods' see PARA 12 note 7.

9 National Health Service Act 2006 Sch 17 para 5.

10 'Disposal', in relation to property, includes the granting of an interest in or right over it: National Health Service Act 2006 Sch 17 para 20.

11 National Health Service Act 2006 Sch 17 para 6.

12 National Health Service Act 2006 Sch 17 para 7.

13 'Labour relations matter' means any of the matters specified in the Trade Union and Labour Relations (Consolidation) Act 1992 s 178(2)(a)-(g) (matters which may be the subject of a collective agreement: see **EMPLOYMENT** vol 41 (2009) PARA 1042), or any dispute about a matter falling within that provision; and for the purposes of this definition the Trade Union and Labour Relations (Consolidation) Act 1992 s 178(2)(a)-(g), with the necessary modifications, applies in relation to office-holders under a relevant body as it applies in relation to employees of a relevant body: National Health Service Act 2006 Sch 17 para 20.

14 National Health Service Act 2006 Sch 17 para 8.



- 15 National Health Service Act 2006 Sch 17 para 9(a).
- 16 National Health Service Act 2006 Sch 17 para 9(b).
- 17 National Health Service Act 2006 Sch 17 para 9.
- 18 *le* under the National Health Service Act 1977 Pt 2 (repealed).
- 19 National Health Service Act 2006 Sch 17 para 10.
- 20 National Health Service Act 2006 Sch 17 para 11(a). As to the meaning of 'pharmaceutical list' see PARA 340 note 12.
- 21 National Health Service Act 2006 Sch 17 para 11(b). As to ophthalmic services under the National Health Service (Wales) Act 2006 see PARA 338.
- 22 *le* under a contract under the National Health Service Act 1977 s 28K, s 28Q or s 28WA (all repealed).
- 23 National Health Service Act 2006 Sch 17 para 12(a).
- 24 *le* under the National Health Service Act 1977 s 28X (repealed).
- 25 National Health Service Act 2006 Sch 17 para 12(b).
- 26 *le* under a contract under the National Health Service Act 2006 s 84 (see PARA 242), s 100 (see PARA 278) or s 117 (see PARA 330). References in the National Health Service Act 2006 Sch 17 para 13 to provisions of the National Health Service Act 2006 include references to corresponding provisions of the National Health Service (Wales) Act 2006: National Health Service Act 2006 Sch 17 par 13(2)(b).
- 27 References in the National Health Service Act 2006 Sch 17 para 13 to primary medical services and primary dental services include such services provided under the National Health Service (Wales) Act 2006: National Health Service Act 2006 Sch 13(2)(a).
- 28 National Health Service Act 2006 Sch 17 para 13(1)(a) (not yet in force in so far as it relates to primary ophthalmic services). Schedule 17 para 13 comes into force in so far as it relates to primary ophthalmic services immediately after, and to the extent that, the Health Act 2006 Sch 8 para 46 is brought into force: see the National Health Service Act 2006 s 277(3)(j), (4), (5). By the National Health Service (Consequential Provisions) Act 2006 s 6, Sch 4, the Health Act 2006 Sch 8 para 46 is repealed but such repeal does not take effect until Sch 8 para 46 is brought into force: see the National Health Service (Consequential Provisions) Act 2006 s 8(4)(l), (5), (6). The Health Act 2006 Sch 8 para 46 comes into force on such day as the Secretary of State may appoint: s 83(7). At the date at which this volume states the law no such day had been appointed. As to references to primary ophthalmic services see PARA 328 note 1.
- 29 *le* under the National Health Service Act 2006 s 91 (see PARA 248), s 106 (see PARA 283), s 123 (see PARA 335) or s 146 (see PARA 417). See also note 26.
- 30 National Health Service Act 2006 Sch 17 para 13(1)(b) (not yet in force for certain purposes: see note 28). As to the meaning of 'local pharmaceutical services' see PARA 419 note 5.
- 31 National Health Service Act 2006 Sch 17 para 14.
- 32 National Health Service Act 2006 Sch 17 para 15.
- 33 National Health Service Act 2006 Sch 17 para 16.
- 34 National Health Service Act 2006 Sch 17 para 17.
- 35 National Health Service Act 2006 Sch 17 para 18.
- 36 National Health Service Act 2006 Sch 17 para 19.

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#### **540. Application to the City of London.**

The Common Council of the City of London<sup>1</sup> may establish a committee which has, in relation to the City of London, the powers in respect of the review and scrutiny of matters relating to the health service<sup>2</sup> which a local authority's<sup>3</sup> overview and scrutiny committee<sup>4</sup> has in relation to the authority's area<sup>5</sup>. The statutory provisions relating to those committees<sup>6</sup> apply as if such a committee were an overview and scrutiny committee and as if the Common Council were a London borough council<sup>7</sup>.

1 As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.

2 I.e. the powers under the Local Government Act 2000 s 21(2)(f): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 342.

3 As to the meaning of 'local authority' see PARA 536 note 3.

4 As to overview and scrutiny committees see PARA 536. As to joint overview and scrutiny committees see PARA 537.

5 National Health Service Act 2006 s 247(1).

6 I.e. the National Health Service Act 2006 s 244(2)-(4) (see PARA 536), s 245 (see PARA 537), s 246 (see PARA 538) and Sch 17 and the National Health Service (Wales) Act 2006 Sch 11 (see PARA 539).

7 National Health Service Act 2006 s 247(2). As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq. The Local Government Act 2000 s 21 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 342 et seq) applies with certain modifications, as if such a committee were an overview and scrutiny committee and as if the Common Council were a local authority: see the National Health Service Act 2006 s 247(3). In the provisions applied by s 247(2) and (3), references to functions under any provision of the Local Government Act 2000 s 21(2) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 342) are, in the case of the committee established under the National Health Service Act 2006 s 247(1), references to its functions under that provision: s 247(4). As to the meaning of 'functions' see PARA 6 note 3.

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## **B. EXERCISE OF REVIEW AND SCRUTINY FUNCTIONS**

### **541. Review and scrutiny.**

An overview and scrutiny committee<sup>1</sup> may review and scrutinise any matter relating to the planning, provision and operation of health services in the area of its local authority<sup>2</sup>. In carrying out the review and scrutiny of a particular matter, the overview and scrutiny committee must: (1) have regard to any guidance issued by the Secretary of State<sup>3</sup> with respect to the exercise of its functions<sup>4</sup>; (2) invite interested parties to comment on the matter<sup>5</sup>. Otherwise, the procedure of review and scrutiny is to be determined by the overview and scrutiny committee<sup>6</sup>.

A local authority<sup>7</sup> may arrange for relevant functions<sup>8</sup> in relation to that authority to be exercisable by an overview and scrutiny committee of another local authority in circumstances where<sup>9</sup> a local authority considers that another local authority would be better placed to undertake a relevant function and the latter agrees to exercise that function<sup>10</sup>. A county council for any area may arrange for one or more of the members of an overview and scrutiny committee of the council for a district comprised in that area to be appointed as: (a) a member of an overview and scrutiny committee of the county council<sup>11</sup> or another local authority, for the purposes of relevant functions of the committee in relation to the county council<sup>12</sup>; or (b) a member of an overview and scrutiny committee of the county council, for the purposes of relevant functions of the committee in relation to another local authority<sup>13</sup>. A county council making an arrangement for an appointment under head (a) or (b) above may specify that the appointment is for the life of the overview and scrutiny committee<sup>14</sup>, until such time as it decides to terminate the appointment<sup>15</sup>, or for the review or scrutiny of a particular matter<sup>16</sup>.

1 In the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 2 references to an 'overview and scrutiny committee' include references to a joint overview and scrutiny committee: reg 1(4). As to the meaning of 'joint overview and scrutiny committee' see PARA 537 note 15. As to the application of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, see PARA 537 note 16.

2 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 2(1). In regs 2-6 'local authority' means any authority to which the National Health Service Act 2006 s 244 (see PARA 536 note 3) applies, the Common Council for the City of London and the Council of the Isles of Scilly: Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 1(3) (definition amended by SI 2004/1427); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55. As to reports and recommendations following review and scrutiny see PARA 542. As to the supply of information to committees by NHS bodies see PARA 545. As to the power of a committee to require an officer of an NHS body to attend before it see PARA 546.

3 See under the Local Government Act 2000 s 38: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 305. As to the Secretary of State see PARA 6 note 8.

4 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 2(2)(a). The functions referred to are those under the Local Government Act 2000 s 21(2)(f): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 342. As to the meaning of 'functions' see PARA 6 note 3.

5 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 2(2)(b).

6 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 2(3).

7 As to the meaning of 'local authority' see PARA 537 note 14.

8 As to the meaning of 'relevant functions' see PARA 537 note 3.

9 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 8(1).

10 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 8(2).

11 In the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 9, references to an overview and scrutiny committee of a county council include references to a joint overview and scrutiny committee of the council and another local authority: reg 9(3). As to local government areas and authorities in England see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

12 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 9(1)(a).

13 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 9(1)(b).

14 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 9(2)(a).

15 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 9(2)(b).

16 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 9(2)(c).

## **UPDATE**

### **541 Review and scrutiny**

TEXT AND NOTES 1-6--SI 2002/3048 reg 2(2A), (4)-(6) (referral by local involvement network) added: SI 2008/528.

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## **542. Reports and recommendations.**

An overview and scrutiny committee<sup>1</sup> may make reports and recommendations to local NHS bodies<sup>2</sup> and to its local authority on any matter reviewed or scrutinised<sup>3</sup> by it<sup>4</sup>. Where an overview and scrutiny committee makes such reports and recommendations it must include an explanation of the matter reviewed or scrutinised<sup>5</sup>, a summary of the evidence considered<sup>6</sup>, a list of the participants involved in the review or scrutiny<sup>7</sup>, and any recommendations on the matter reviewed or scrutinised<sup>8</sup>. Where an overview and scrutiny committee requests a response from a local NHS body to whom it has made a report or recommendation, that body must respond in writing<sup>9</sup> to the committee within 28 days of the request<sup>10</sup>.

1 In the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 3 references to an overview and scrutiny committee include references to a joint overview and scrutiny committee: reg 1(4). As to overview and scrutiny committees see PARA 536. As to the meaning of 'joint overview and scrutiny committee' see PARA 537 note 15.

2 'Local NHS body' means, in relation to an overview and scrutiny committee, a strategic health authority, primary care trust, NHS trust or NHS foundation trust which provides, or arranges for the provision of, or performs any management function in relation to, services to persons residing within the area of the committee's local authority or, in the case of a joint overview and scrutiny committee, the areas of the authorities which have appointed that joint committee: Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 1(3) (definition amended by SI 2004/696). As to strategic health authorities see PARA 94 et seq. As to primary care trusts see PARA 111. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to the meaning of 'local authority' see PARA 541 note 2.

3 I.e. pursuant to the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 2: see PARA 541.

4 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 3(1). As to the application of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, see PARA 537 note 16.

5 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 3(2)(a).

6 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 3(2)(b).

7 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 3(2)(c).

8 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 3(2)(d).

9 As to the meaning of 'writing' see PARA 7 note 2.

10 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 3(3).

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### **543. Consultation of committees by local NHS bodies other than NHS foundation trusts.**

Subject to the following provisions, where a local NHS body<sup>1</sup> other than an NHS foundation trust<sup>2</sup>, has under consideration any proposal for a substantial development of the health service<sup>3</sup> in the area of a local authority<sup>4</sup>, or for a substantial variation in the provision of such service, it must consult the overview and scrutiny committee<sup>5</sup> of that authority<sup>6</sup>. This obligation does not apply with respect to any proposal to establish or dissolve an NHS trust<sup>7</sup> or a primary care trust<sup>8</sup> (unless the establishment or dissolution involves a substantial development or variation as referred to above)<sup>9</sup>. Neither does this obligation apply to any proposals on which the local NHS body concerned is satisfied that a decision has to be taken without allowing time for consultation<sup>10</sup> because of a risk to safety or welfare of patients<sup>11</sup> or staff; but, in any such case, the local NHS body must notify the overview and scrutiny committee immediately of the decision taken and the reason why no consultation has taken place<sup>12</sup>.

Subject to any directions issued by the Secretary of State<sup>13</sup>, an overview and scrutiny committee which has been so consulted by a local NHS body may make comments on the proposal consulted on by such date as may be specified by the local NHS body<sup>14</sup>. In any case where an overview and scrutiny committee is not satisfied that: (1) consultation on any proposal has been adequate in relation to content or time allowed<sup>15</sup>; or (2) where no consultation has taken place<sup>16</sup>, the reasons given by the local NHS body are adequate<sup>17</sup>, it may report to the Secretary of State in writing<sup>18</sup> who may require the local NHS body concerned to carry out such consultation, or such further consultation, with the overview and scrutiny committee as he considers appropriate<sup>19</sup>. Where such further consultation has been required, the local NHS body must, having regard to the outcome of the further consultation, reconsider any decision it has taken in relation to the proposal in question<sup>20</sup>.

In any case where an overview and scrutiny committee considers that the proposal would not be in the interests of the health service in the area of the committee's local authority, it may report to the Secretary of State in writing who may make a final decision on the proposal and require the local NHS body to take such action, or desist from taking such action, as he may direct<sup>21</sup>.

1 As to the meaning of 'local NHS body' see PARA 542 note 2.

2 As to consultation of overview and scrutiny committees by NHS foundation trusts see PARA 544. As to NHS foundation trusts see PARA 174.

3 As to the meaning of 'health service' see PARA 10 note 3.

4 As to the meaning of 'local authority' see PARA 541 note 2.

5 In the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4 references to an overview and scrutiny committee include references to a joint overview and scrutiny committee: reg 1(4). As to overview and scrutiny committees see PARA 536. As to the meaning of 'joint overview and scrutiny committee' see PARA 537 note 15.

6 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(1) (amended by SI 2004/696). As to the application of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, see PARA 537 note 16. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627. As to the consideration of similar

requirements in the Community Health Council Regulations 1985 (SI 1985/304) (revoked) see *R v North West Thames Regional Health Authority, ex p Daniels* [1993] 4 Med LR 364, (1993) 19 BMLR 67. As to when an obligation may arise for a health service body to re-consult on proposals after the initial consultation suggests an alternative solution about which there has not been specific consultation see *R (on the application of Smith) v East Kent Hospital NHS Trust* [2002] EWHC 2640 (Admin), [2002] All ER (D) 38 (Dec).

7 As to NHS trusts see PARA 155.

8 As to primary care trusts see PARA 111.

9 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(2)(a).

10 As to when a decision may be such as to justify a body taking such action see *R v North and East Devon Health Authority, ex p Pow*, *R v North and East Devon Health Authority, ex p Metcalfe* (1998) 39 BMLR 77.

11 As to the meaning of 'patient' see PARA 15 note 6.

12 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(3).

13 Ie under the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 10: see PARA 547. As to the Secretary of State see PARA 6 note 8.

14 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(4). As to the supply of information to committees by NHS bodies see PARA 545. As to the power of a committee to require an officer of an NHS body to attend before it see PARA 546.

15 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(5)(a).

16 Ie where the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(3) applies: see the text to notes 10-12.

17 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(5)(b).

18 As to the meaning of 'writing' see PARA 7 note 2.

19 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(5).

20 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(6).

21 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4(7).

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#### **544. Consultation of committees by NHS foundation trusts.**

Where an NHS foundation trust<sup>1</sup> proposes to make an application to the Independent Regulator of NHS Foundation Trusts<sup>2</sup>, to vary the terms of its authorisation<sup>3</sup>, and that application, if successful, would result in a substantial variation of the provision by an NHS foundation trust of protected goods or services<sup>4</sup> in the area of a local authority<sup>5</sup>, the NHS foundation trust must consult the overview and scrutiny committee<sup>6</sup> of that local authority<sup>7</sup>.

Subject to any directions issued by the Secretary of State<sup>8</sup>, an overview and scrutiny committee which has been so consulted by an NHS foundation trust, may make comments on the proposed application by such date as may be specified by the NHS foundation trust<sup>9</sup>. In any case where an overview and scrutiny committee is not satisfied that consultation on any application has been adequate in relation to content or time allowed it may report to the regulator in writing<sup>10</sup> and the regulator may require the NHS foundation trust to carry out such consultation, or such further consultation with the overview and scrutiny committee as it considers appropriate<sup>11</sup>. In any case where an overview and scrutiny committee considers that the proposed application would not be in the interests of the health service<sup>12</sup> in the area of the committee's local authority, it may report to the regulator in writing and the regulator must have regard<sup>13</sup> to the report<sup>14</sup>.

1 As to NHS foundation trusts see PARA 174.

2 As to the Independent Regulator of NHS Foundation Trusts see PARA 188.

3 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4A(1)(a) (reg 4A added by SI 2004/696). 'Authorisation' means an authorisation given by the Independent Regulator of NHS Foundation Trusts under the National Health Service Act 2006 s 35 (see PARA 195); Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 1(3) (definition added by SI 2004/696); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the application of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, see PARA 537 note 16.

4 'Protected goods or services' means in relation to an NHS foundation trust, goods or services which that trust is required by virtue of the National Health Service Act 2006 s 43(4) (see PARA 205) to provide under the terms of its authorisation: Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 1(3) (definition added by SI 2004/696); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'goods' see PARA 12 note 7.

5 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4A(1)(b) (as added: see note 3). As to the meaning of 'local authority' see PARA 541 note 2.

6 In the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4A references to an overview and scrutiny committee include references to a joint overview and scrutiny committee: reg 1(4). As to overview and scrutiny committees see PARA 536. As to the meaning of 'joint overview and scrutiny committee' see PARA 537 note 15.

7 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4A(2) (as added: see note 3). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627. As to the supply of information to committees by NHS bodies see PARA 545. As to the power of a committee to require an officer of an NHS body to attend before it see PARA 546.

8 Ie under the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 10: see PARA 547. As to the Secretary of State see PARA 6 note 8.



9 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4A(3) (as added: see note 3).

10 As to the meaning of 'writing' see PARA 7 note 2.

11 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4A(4) (as added: see note 3).

12 As to the meaning of 'health service' see PARA 10 note 3.

13 In accordance with the National Health Service Act 2006 s 38(2): see PARA 197.

14 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 4A(5) (as added: see note 3); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

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#### **545. Information to be furnished by local NHS bodies.**

It is the duty of a local NHS body<sup>1</sup> to provide an overview and scrutiny committee<sup>2</sup> with such information about the planning, provision and operation of health services in the area of that committee's local authority<sup>3</sup> as the committee may reasonably require in order to discharge its functions<sup>4</sup>. However, this provision does not require the provision by a local NHS body of: (1) confidential information which relates to and identifies a living individual, unless at least one of the specified conditions applies<sup>5</sup>; or (2) any other information the disclosure of which is prohibited by or under any enactment<sup>6</sup>, except in specified circumstances<sup>7</sup>. In a case where the disclosure of information is prohibited by head (1) or (2) above, the overview and scrutiny committee may require the person<sup>8</sup> holding the information to put the information in a form from which the identity of the individual concerned cannot be identified in order that the information may be disclosed<sup>9</sup>.

1 As to the meaning of 'local NHS body' see PARA 542 note 2.

2 In the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 5 references to an overview and scrutiny committee include references to a joint overview and scrutiny committee: reg 1(4). Where a local NHS body provides, or arranges for the provision of, or performs any management function in relation to, services to persons residing within the area of several local authorities, its duty under reg 5(1) is satisfied if it provides information to the joint overview and scrutiny committee of those authorities: reg 5(2). As to overview and scrutiny committees see PARA 536. As to the meaning of 'joint overview and scrutiny committee' see PARA 537 note 15.

3 As to the meaning of 'local authority' see PARA 541 note 2.

4 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 5(1). As to the meaning of 'functions' see PARA 6 note 3. As to the application of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, see PARA 537 note 16.

5 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 5(3)(a). The specified conditions are: (1) the information is or can be disclosed in a form from which the identity of the individual cannot be ascertained (reg 5(4)(a)); or (2) the individual consents to the information being disclosed (reg 5(4)(b)).

6 As to the meaning of 'enactment' see PARA 10 note 7.

7 See the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 5(3)(b). The specified circumstances are where the prohibition on the disclosure of information arises because the information is capable of identifying an individual (reg 5(5)(a)); and the information is or can be disclosed in a form from which the identity of the individual cannot be ascertained (reg 5(5)(b)).

8 As to the meaning of 'person' see PARA 17 note 2.

9 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 5(6).

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#### **546. Obtaining information and explanations.**

Subject to any directions issued by the Secretary of State<sup>1</sup>, an overview and scrutiny committee<sup>2</sup> may require an officer<sup>3</sup> of a local NHS body<sup>4</sup> to attend before the committee to answer such questions as appear to the committee to be necessary for discharging its functions<sup>5</sup>. It is the duty of any such officer to comply with any such requirement<sup>6</sup>. However, the overview and scrutiny committee may not require a person to attend unless reasonable notice of the intended date of attendance has been given to that person<sup>7</sup>; and a person is not required to answer any question put to him by the overview and scrutiny committee to the extent that the answer requires the provision of protected information<sup>8</sup>, or if he would be entitled to refuse to answer in, or for the purposes of, proceedings in a court in England and Wales<sup>9</sup>.

1 Lie under the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 10: see PARA 547. As to the Secretary of State see PARA 6 note 8.

2 In the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 6 references to an overview and scrutiny committee include references to a joint overview and scrutiny committee: reg 1(4). As to overview and scrutiny committees see PARA 536. As to the meaning of 'joint overview and scrutiny committee' see PARA 537 note 15.

3 As to the meaning of 'officer' see PARA 28 note 5.

4 As to the meaning of 'local NHS body' see PARA 542 note 2.

5 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 6(1). As to the meaning of 'functions' see PARA 6 note 3. As to the application of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, see PARA 537 note 16.

6 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 6(2). This provision is expressed to be subject to reg 6(3) and (4): see the text to notes 7-9.

7 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 6(3).

8 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 6(4)(a). 'Protected information' is information of a type specified in reg 5(3) (unless within an exception under reg 5(4) or (5)) (see PARA 545): reg 6(4)(a).

9 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 6(4)(b). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

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#### **547. Directions.**

The Secretary of State<sup>1</sup> may direct a local authority<sup>2</sup>: (1) to make arrangements of any description relating to the appointment of a joint overview and scrutiny committee<sup>3</sup>, the delegation of its overview and scrutiny functions<sup>4</sup>, or the co-option of members to its overview and scrutiny committee<sup>5</sup>; and (2) to comply with such requirements in connection with the arrangements as he may direct<sup>6</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'local authority' see PARA 537 note 14.

3 I.e. arrangements within the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 7: see PARA 537.

4 I.e. arrangements within the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 8: see PARA 541.

5 See the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 10(a). Arrangements as to co-option of members are those within reg 9: see PARA 541. As to the application of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, see PARA 537 note 16.

6 Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, SI 2002/3048, reg 10(b).

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## **(10) HEALTH CARE QUALITY AND STANDARDS**

### **(i) Quality and Standards**

#### **548. Quality in health care.**

It is the duty of each NHS body<sup>1</sup> to put and keep in place arrangements for the purpose of monitoring and improving the quality of health care provided by and for that body<sup>2</sup>. 'Health care' means: (1) services provided<sup>3</sup> to individuals for or in connection with the prevention, diagnosis or treatment of illness<sup>4</sup>; and (2) the promotion and protection of public health<sup>5</sup>.

1 'NHS body' means an English NHS body, a Welsh NHS body, and a cross-border SHA: Health and Social Care (Community Health and Standards) Act 2003 s 148. 'English NHS body' means a primary care trust; a strategic health authority; an NHS trust all or most of whose hospitals, establishments and facilities are situated in England; an NHS foundation trust; a special health authority performing functions only or mainly in respect of England: s 148. 'Welsh NHS body' means a local health board; an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales; a special health authority performing functions only or mainly in respect of Wales: s 148. 'Cross-border SHA' means a special health authority not performing functions only or mainly in respect of England or only or mainly in respect of Wales: s 148. As to primary care trusts see PARA 111. As to strategic health authorities see PARA 94 et seq. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to special health authorities see PARA 136. As to health service bodies in Wales see PARA 75. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

In so far as any health care is provided by or for the Health Protection Agency it is to be treated for the purposes of the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 2 (ss 45-47C), Ch 3 (ss 48-69A) and Ch 10 (ss 120-149) as an English NHS body: see the Health Protection Agency Act 2004 s 10(1); and PARA 213.

2 Health and Social Care (Community Health and Standards) Act 2003 s 45(1). In discharging this duty NHS bodies must take into account standards set by the Secretary of State and the Welsh Ministers (see ss 46, 47; and PARA 549) and any code of practice issued under s 47A (see s 47C; and PARA 550). As to the review by the Commission for Healthcare Audit and Inspection of arrangements made under this duty see PARAS 561, 566.

3 A person provides health care for another person if he provides it: (1) at the direction of the other person (Health and Social Care (Community Health and Standards) Act 2003 s 149(1)(a)); (2) in accordance with, or by virtue of, an agreement or arrangements made by the other person (whether or not with the person providing the health care) (s 149(1)(b)); or (3) otherwise on behalf of the other person (s 149(1)(c)). References in s 149(1) to the provision of health care include references to its provision jointly with another person: s 149(2). As to the meaning of 'person' see PARA 17 note 2.

4 Health and Social Care (Community Health and Standards) Act 2003 s 45(2)(a). As to the meaning of 'illness' see PARA 10 note 5: definition applied by s 45(3) (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 239, 241).

5 Health and Social Care (Community Health and Standards) Act 2003 s 45(2)(b).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(i) Quality and Standards/549. Setting of standards of health care.

#### **549. Setting of standards of health care.**

The Secretary of State<sup>1</sup> may prepare and publish statements of standards in relation to the provision of health care<sup>2</sup> by and for English NHS bodies and cross-border SHAs<sup>3</sup>. The Secretary of State must keep the standards under review and may publish amended statements whenever he considers it appropriate<sup>4</sup>. The Secretary of State must consult such persons<sup>5</sup> as he considers appropriate before publishing a statement of standards<sup>6</sup>, and before publishing an amended statement which in his opinion effects a substantial change in the standards<sup>7</sup>. The standards set out in such statements are to be taken into account by every English NHS body and cross-border SHA in discharging its duty<sup>8</sup> of monitoring and improving the quality of health care provided by it<sup>9</sup>.

The Welsh Ministers<sup>10</sup> may prepare and publish statements of standards in relation to the provision of health care by and for Welsh NHS bodies<sup>11</sup>. The Welsh Ministers must keep the standards under review and may publish amended statements whenever they consider it appropriate<sup>12</sup>. The Welsh Ministers must consult such persons as they consider appropriate before publishing a statement of standards<sup>13</sup>, and before publishing an amended statement which in their opinion effects a substantial change in the standards<sup>14</sup>. The standards set out in such statements are to be taken into account by every Welsh NHS body in discharging its duty<sup>15</sup> of monitoring and improving the quality of health care provided by it<sup>16</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'health care' see PARA 548.

3 Health and Social Care (Community Health and Standards) Act 2003 s 46(1). As to the meanings of 'English NHS body' and 'cross-border SHA' see PARA 548 note 1.

4 Health and Social Care (Community Health and Standards) Act 2003 s 46(2).

5 As to the meaning of 'person' see PARA 17 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

6 Health and Social Care (Community Health and Standards) Act 2003 s 46(3)(a).

7 Health and Social Care (Community Health and Standards) Act 2003 s 46(3)(b).

8 I.e its duty under the Health and Social Care (Community Health and Standards) Act 2003 s 45: see PARA 548.

9 Health and Social Care (Community Health and Standards) Act 2003 s 46(4).

10 The functions in the Health and Social Care (Community Health and Standards) Act 2003 s 47 were originally conferred on the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

11 Health and Social Care (Community Health and Standards) Act 2003 s 47(1); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh NHS body' see PARA 548 note 1.

12 Health and Social Care (Community Health and Standards) Act 2003 s 47(2); Government of Wales Act 2006 Sch 11 para 32.

13 Health and Social Care (Community Health and Standards) Act 2003 s 47(3)(a); Government of Wales Act 2006 Sch 11 para 32.

14 Health and Social Care (Community Health and Standards) Act 2003 s 47(3)(b); Government of Wales Act 2006 Sch 11 para 32.

15 le its duty under the Health and Social Care (Community Health and Standards) Act 2003 s 45: see PARA 548.

16 Health and Social Care (Community Health and Standards) Act 2003 s 47(4).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(i) Quality and Standards/550. Code of practice relating to health care associated infections.

### **550. Code of practice relating to health care associated infections.**

The Secretary of State<sup>1</sup> may issue a code of practice applying to English NHS bodies<sup>2</sup> (other than strategic health authorities)<sup>3</sup> and cross-border SHAs<sup>4</sup>, and relating to the prevention and control of health care associated infections<sup>5</sup> in connection with health care provided by or for those bodies<sup>6</sup>.

The code may provide for provisions of the code to apply to such description or descriptions of the bodies named above as may be specified in the code<sup>7</sup>; and such body or bodies as may be so specified<sup>8</sup>. The code may in particular: (1) make such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them<sup>9</sup>; (2) contain provisions imposing on bodies to which the provisions apply requirements in relation to health care provided for such bodies by other persons<sup>10</sup> as well as in relation to health care provided by such bodies<sup>11</sup>. The code may: (a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise)<sup>12</sup>; (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time<sup>13</sup>; (c) make different provision for different cases or circumstances<sup>14</sup>. The Secretary of State must keep the code under review and may from time to time revise the whole or any part of the code<sup>15</sup>, and issue a revised code<sup>16</sup>.

Where the Secretary of State proposes to issue a code of practice he must prepare a draft of the code<sup>17</sup>, and consult such persons as he considers appropriate about the draft<sup>18</sup>. Where the Secretary of State proposes to issue a revised code which in his opinion would result in a substantial change in the code, he must prepare a draft of the revised code<sup>19</sup>, and consult such persons as he considers appropriate about the change<sup>20</sup>. Where, following such consultation, the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as he thinks fit), it comes into force at the time when it is issued by the Secretary of State<sup>21</sup>. Where any document by reference to whose provisions the code operates<sup>22</sup> is a document published by the Secretary of State in connection with his functions relating to health<sup>23</sup>, he proposes to revise the document<sup>24</sup>, and in his opinion the revision would result in a substantial change in the code<sup>25</sup>, the Secretary of State must, before revising the document, consult such persons as he considers appropriate about the change<sup>26</sup>. Similar provisions apply where the document is not a document published by the Secretary of State in connection with his functions relating to health<sup>27</sup>.

Where any provisions of a code of practice apply to an NHS body<sup>28</sup>, the body must observe those provisions in discharging its duty<sup>29</sup> of monitoring and improving the quality of health care provided by it<sup>30</sup>. A failure to observe any provision of a code of practice does not of itself make a person liable to any criminal or civil proceedings<sup>31</sup>. A code of practice is admissible in evidence in any criminal or civil proceedings<sup>32</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'English NHS body' see PARA 548 note 1.

3 Health and Social Care (Community Health and Standards) Act 2003 s 47A(1)(a), (2)(a) (ss 47A, 47B, 47C added by the Health Act 2006 s 14). As to strategic health authorities see PARA 94 et seq.



4 Health and Social Care (Community Health and Standards) Act 2003 s 47A(1)(a), (2)(b) (as added: see note 3). As to the meaning of 'cross-border SHA' see PARA 548 note 1.

5 'Health care associated infection' means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where: (1) health care is being, or has been, provided to that or any other individual (Health and Social Care (Community Health and Standards) Act 2003 s 47A(8)(a) (as added: see note 3)); and (2) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of the health care (s 47A(8)(b) (as so added)); but does not include an infection to which the individual is deliberately exposed as part of any health care (s 47A(9) (as so added)). As to the meaning of 'health care' see PARA 548.

6 Health and Social Care (Community Health and Standards) Act 2003 s 47A(1)(b) (as added: see note 3).

7 Health and Social Care (Community Health and Standards) Act 2003 s 47A(3)(a) (as added: see note 3). Nothing in s 47A(3)-(5) is to be read as prejudicing the generality of s 47A(1) (see the text to notes 1-6): s 47A(6) (as so added).

8 Health and Social Care (Community Health and Standards) Act 2003 s 47A(3)(b) (as added: see note 3). See also note 7.

9 Health and Social Care (Community Health and Standards) Act 2003 s 47A(4)(a) (as added: see note 3). See also note 7.

10 As to the meaning of 'person' see PARA 17 note 2.

11 Health and Social Care (Community Health and Standards) Act 2003 s 47A(4)(b) (as added: see note 3). See also note 7.

12 Health and Social Care (Community Health and Standards) Act 2003 s 47A(5)(a) (as added: see note 3). See also note 7.

13 Health and Social Care (Community Health and Standards) Act 2003 s 47A(5)(b) (as added: see note 3). See also note 7.

14 Health and Social Care (Community Health and Standards) Act 2003 s 47A(5)(c) (as added: see note 3). See also note 7.

15 Health and Social Care (Community Health and Standards) Act 2003 s 47A(7)(a) (as added: see note 3).

16 Health and Social Care (Community Health and Standards) Act 2003 s 47A(7)(b) (as added: see note 3). Any reference in Pt 2 (ss 41-149) to a code of practice issued under s 47A includes a revised code issued under it: s 47A(10) (as so added).

17 Health and Social Care (Community Health and Standards) Act 2003 s 47B(1)(a) (as added: see note 3).

18 Health and Social Care (Community Health and Standards) Act 2003 s 47B(1)(b) (as added: see note 3). Consultation undertaken by the Secretary of State before 1 October 2006, being the date of the commencement of s 47B, is as effective for the purposes of s 47B as consultation undertaken after that time: s 47B(6) (as so added). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

19 Health and Social Care (Community Health and Standards) Act 2003 s 47B(2)(a) (as added: see note 3).

20 Health and Social Care (Community Health and Standards) Act 2003 s 47B(2)(b) (as added: see note 3). See also note 18.

21 Health and Social Care (Community Health and Standards) Act 2003 s 47B(3) (as added: see note 3).

22 As mentioned in the Health and Social Care (Community Health and Standards) Act 2003 s 47A(5)(a) and (b): see the text to notes 12, 13.

23 Health and Social Care (Community Health and Standards) Act 2003 s 47B(4)(a) (as added: see note 3).

24 Health and Social Care (Community Health and Standards) Act 2003 s 47B(4)(b) (as added: see note 3).

25 Health and Social Care (Community Health and Standards) Act 2003 s 47B(4)(c) (as added: see note 3).

26 Health and Social Care (Community Health and Standards) Act 2003 s 47B(4) (as added: see note 3). See also note 18.

27 See Health and Social Care (Community Health and Standards) Act 2003 s 47B(5) (as added: see note 3). See also note 18.

28 As to the meaning of 'NHS body' see PARA 548 note 1.

29 As to its duty under the Health and Social Care (Community Health and Standards) Act 2003 s 45: see PARA 548.

30 Health and Social Care (Community Health and Standards) Act 2003 s 47C(1) (as added: see note 3).

31 Health and Social Care (Community Health and Standards) Act 2003 s 47C(2) (as added: see note 3).

32 Health and Social Care (Community Health and Standards) Act 2003 s 47C(3) (as added: see note 3).

## UPDATE

### 550 Code of practice relating to health care associated infections

TEXT AND NOTES--Replaced. Health and Social Care (Community Health and Standards) Act 2003 ss 47A-47C repealed: Health and Social Care Act 2008 Sch 5 para 39, Sch 15 Pt 1. Regulations under the Health and Social Care Act 2008 s 20 (see further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A.3) may make provision for the prevention and control of health care associated infections and may include such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health or social care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them: s 20(5). 'Health care associated infection' means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where (1) health or social care is being, or has been, provided to that or any other individual; and (2) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of that care: s 20(6). But 'health care associated infection' does not include an infection to which the individual is deliberately exposed as part of any health care: s 20(7). The Secretary of State may issue a code of practice about compliance with any requirements of regulations under s 20 which relate to the prevention or control of health care associated infections: s 21(1). The code may (a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise); (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time; (c) make different provision for different cases or circumstances: s 21(2). The Secretary of State must keep the code under review and may from time to time revise the whole or any part of the code, and issue a revised code: s 21(3). As to the consultation process the Secretary of State must follow when preparing to issue or revise such a code of practice, see s 22. The Care Quality Commission must issue guidance about compliance with the requirements of regulations under s 20, other than requirements which relate to the prevention or control of health care associated infections: see s 23. Where the Commission proposes to issue guidance under s 23, it must prepare a draft of the guidance, and consult such persons as the Commission considers appropriate about the draft: see s 24. A code of practice under s 21 and guidance under s 23 are to be taken into account (i) in the making of any decision by the Care Quality Commission (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A.3) under Pt 1 Ch 2 (ss 8-44); (ii) in any proceedings for the making of an order under s 30 (see PARA 1001A.5); (iii) in any proceedings on an appeal against such a decision or order; (iv) in any proceedings for an offence under s 33 (see PARA 1001A.6) or under regulations under s 20: s 25(1). A code of practice under s 21 or guidance under s 23 are also admissible in evidence in

other criminal or civil proceedings, but a failure to observe any provision of a code of practice under s 21 or guidance under s 23 does not of itself make a person liable to any criminal or civil proceedings: s 25(2), (3).

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### **551. Regulations and orders.**

Any order or regulations<sup>1</sup> may make different provision for different purposes<sup>2</sup>, and may make incidental, supplementary, consequential, transitory or transitional or saving provision<sup>3</sup>. Any power to make regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case<sup>4</sup>. Any power to make an order or regulations is exercisable by statutory instrument<sup>5</sup>.

1    le under the Health and Social Care (Community Health and Standards) Act 2003.

2    Health and Social Care (Community Health and Standards) Act 2003 s 195(1)(a).

3    Health and Social Care (Community Health and Standards) Act 2003 s 195(1)(b).

4    Health and Social Care (Community Health and Standards) Act 2003 s 195(2).

5    Health and Social Care (Community Health and Standards) Act 2003 s 195(4). The Secretary of State may not make a statutory instrument containing an order or regulations making, by virtue of the Health and Social Care (Community Health and Standards) Act 2003 s 195(1)(b) (see the text to note 3), provision which amends or repeals any part of the text of an Act (including an Act of the Scottish Parliament), unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament: see s 195(5)(c). A statutory instrument containing any other order or regulations is subject to annulment in pursuance of a resolution of either House of Parliament: see s 195(6). As to statutory instruments generally see **STATUTES** vol 44(1) (Reissue) PARA 1501 et seq.

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## **(ii) The Commission for Healthcare Audit and Inspection**

### **A. ESTABLISHMENT**

#### **552. Status.**

The Commission for Healthcare Audit and Inspection is a body corporate<sup>1</sup>. The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>2</sup>. The Commission's property is not to be regarded as property of, or property held on behalf of, the Crown<sup>3</sup>.

1 See the Health and Social Care (Community Health and Standards) Act 2003 s 41(1). The Commission is known as the Healthcare Commission.

2 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 1(1). As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

3 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 1(2).

### **UPDATE**

#### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

#### **552 Status**

TEXT AND NOTES--Repealed: Health and Social Care Act 2008 Sch 5 paras 36, 52, Sch 15 Pt 1.

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### **553. Chairman and other members.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> consists of a person appointed as chairman by the Secretary of State<sup>2</sup>, a member appointed by the Welsh Ministers who appears to them to be suited to make the interests of Wales<sup>3</sup> his special care<sup>4</sup>, and other members appointed by the Secretary of State<sup>5</sup>. The Secretary of State must consult the Welsh Ministers, and the Welsh Ministers must consult the Secretary of State, before exercising their respective appointment functions<sup>6</sup>. In addition to the chairman, the Commission has 14 other members, and the chairman and the majority of the other members must be lay members<sup>7</sup>.

The Secretary of State or, as the case may be, the Welsh Ministers, may in the prescribed<sup>8</sup> manner remove from office any such person appointed by him or them if (and only if) he is or they are satisfied that one of the specified conditions is satisfied in relation to that person<sup>9</sup>. The specified conditions in relation to a person are that: (1) he is unable or unfit to carry out the duties of his office<sup>10</sup>; (2) he is failing to carry out the duties of his office<sup>11</sup>; (3) he is disqualified from holding office (or was disqualified at the time of his appointment)<sup>12</sup>.

The Secretary of State<sup>13</sup> may by regulations<sup>14</sup> make provision as to: (a) the appointment of the chairman and other members (including the number, or limits on the number, of members who may be appointed and any conditions to be fulfilled for appointment)<sup>15</sup>; and (b) the tenure of office of the chairman and other members (including the circumstances in which they cease to hold office, are disqualified from holding office or may be suspended from office)<sup>16</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(1)(a) (Sch 6 para 3(1)(a), (c) amended by the Health Act 2006 s 80(1), Sch 8 paras 53, 58(1), (2)(a)). As to the Secretary of State see PARA 6 note 8. The Secretary of State's powers of appointment of the chairman and members of the Commission are now exercised by the Appointments Commission: see PARA 820.

3 As to the meaning of 'Wales' see PARA 6 note 2.

4 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(1)(b) (amended by the Health Act 2006 Sch 8 paras 53, 58(1), (2)(b)); Government of Wales Act 2006 Sch 11 para 32. This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. The Appointments Commission is to exercise so much of any function of the Welsh Ministers relating to the appointment of members to the Commission for Healthcare Audit and Inspection as may be specified in a direction given by the Welsh Ministers: Health Act 2006 s 61; Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

5 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(1)(c) (as amended: see note 2). See also note 2.

6 See the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(11) (amended by the Health Act 2006 Sch 8, paras 53, 58(1), (4)); Government of Wales Act 2006 Sch 11 para 32. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

7 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 2. 'Lay member' means a person who is not a health care professional, or the holder of a paid appointment or office with an NHS body: reg 1(2). 'Health care professional' means a person who is a member of a profession regulated by a body for the time being mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294): Commission for

Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 1(2). As to the meaning of 'NHS body' see PARA 548 note 1.

8 'Prescribed' means prescribed by regulations made by the Secretary of State: Health and Social Care (Community Health and Standards) Act 2003 s 148. As to the making of regulations see PARA 551. As to the provision made see the Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 7; and PARA 554.

9 See the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(4), (5); Government of Wales Act 2006 Sch 11 para 32. The Secretary of State must consult the Welsh Ministers, and the Welsh Ministers must consult the Secretary of State, before exercising any of his or their functions under the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(4) or (5): see Sch 6 para 3(12), (13); Government of Wales Act 2006 Sch 11 para 32.

10 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(6)(a).

11 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(6)(b).

12 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(6)(c).

13 The Secretary of State must consult the Welsh Ministers, and the Welsh Ministers must consult the Secretary of State, before exercising any of his or their functions under the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(7): see Sch 6 para 3(12), (13); Government of Wales Act 2006 Sch 11 para 32.

14 The Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, have been made: see the text to note 7 and PARAS 553-556.

15 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(7)(a).

16 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(7)(b). Regulations under Sch 6 para 3(7)(b) relating to the suspension of a person from office may only provide for suspension where it appears to the Secretary of State (or, in the case of a person appointed under Sch 6 para 3(1)(b) (see the text to notes 3-4), the Welsh Ministers) that one of the conditions referred to in Sch 6 para 3(6) (see the text to notes 10-12) is or may be satisfied in relation to that person: Sch 6 para 3(8); Government of Wales Act 2006 Sch 11 para 32.

## UPDATE

### 552-592 [The Care Quality Commission]

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### 553 Chairman and other members

TEXT AND NOTES--Repealed: Health and Social Care Act 2008 Sch 5 para 52, Sch 15 Pt 1. SI 2003/3279 revoked: SI 2009/462. As to membership of the Care Quality Commission, see the Health and Social Care Act 2008 Sch 1 para 3.

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#### **554. Tenure of office of members.**

The term of office of a member<sup>1</sup> of the Commission for Healthcare Audit and Inspection is such period, not exceeding five years, as specified by the Secretary of State<sup>2</sup>. A member is eligible for re-appointment on termination of his office<sup>3</sup>.

A member may resign his office at any time during his term of office by giving notice in writing<sup>4</sup> to the Secretary of State<sup>5</sup>. Where during his term of office a member other than the chairman is appointed to be the chairman, his tenure of office as such a member terminates when his appointment as chairman takes effect<sup>6</sup>. If the Secretary of State is satisfied that one of the specified conditions<sup>7</sup> is satisfied in relation to a member, he may remove the member from office by giving him notice in writing to that effect, and the notice must state the reason for his removal, and that the member's tenure of office is to cease forthwith<sup>8</sup>.

1 'Member', unless the context otherwise requires, means a member of the Commission for Healthcare Audit and Inspection; and in relation to the Commission 'member' includes the chairman: Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 1(2). 'Chairman' means, unless the context otherwise requires, the chairman of the Commission: reg 1(2). As to the Commission for Healthcare Audit and Inspection see PARA 552. As to the appointment of the chairman and members of the Commission see PARA 553.

2 See the Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 3(1). Regulation 3(1) states 'such period, not exceeding five years, as specified by the Secretary of State to the relevant special health authority before the appointment is made'. In the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3 under which the Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, are made all references to the relevant special health authority are repealed: see the Health Act 2006 Sch 8 para 58; and PARA 553. The Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 3(1) is expressed to be subject to reg 7: see the text to notes 4-8. In relation to a member appointed under the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(1)(b) (see PARA 553), references in the Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, regs 3 and 7 to the Secretary of State are to be construed as references to the Welsh Ministers: reg 1(3); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the Secretary of State see PARA 6 note 8.

3 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 3(2). This provision is expressed to be subject to reg 4: see PARA 555.

4 As to the meaning of 'writing' see PARA 7 note 2.

5 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 7(1). See also note 2.

6 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 7(2).

7 One of the conditions specified in the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(6): see PARA 553.

8 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 7(3). See also note 2.

#### **UPDATE**

#### **552-592 [The Care Quality Commission]**



The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

#### **554 Tenure of office of members**

TEXT AND NOTES--SI 2003/3279 revoked: SI 2009/462. The Secretary of State may by regulations make provision as to the tenure of office of members of the Care Quality Commission: see the Health and Social Care Act 2008 Sch 1 para 3(4).

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### **555. Disqualification for appointment or from holding office.**

A person is disqualified for appointment or from holding office as a member<sup>1</sup> of the Commission for Healthcare Audit and Inspection if<sup>2</sup>:

- 368 (1) he is included in any list maintained by the Secretary of State<sup>3</sup> of persons considered unsuitable to work with children<sup>4</sup>, or any such list<sup>5</sup> of persons considered unsuitable to work with vulnerable adults<sup>6</sup>;
- 369 (2) he has within the previous five years been convicted<sup>7</sup> (a) of an offence under the Care Standards Act 2000 or regulations made under it<sup>8</sup>; or (b) in the British Islands<sup>9</sup> of any other offence, or convicted elsewhere of such an offence which, if committed in any part of the British Islands would constitute a criminal offence in that part, and in either case has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine<sup>10</sup>, and which has not been quashed on appeal<sup>11</sup>;
- 370 (3) he has been adjudged bankrupt or had a sequestration of his estate awarded<sup>12</sup>, or made a composition or arrangement with, or granted a trust deed for, his creditors<sup>13</sup>;
- 371 (4) he is subject to a director's disqualification order<sup>14</sup>, or to an order<sup>15</sup> relating to a failure to pay under a county court administration order<sup>16</sup>;
- 372 (5) he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated<sup>17</sup>; or, in Scotland, removed<sup>18</sup> from being concerned in the management or control of any charitable body<sup>19</sup>;
- 373 (6) he has been removed<sup>20</sup> from office as a member of the Audit Commission by the Secretary of State<sup>21</sup>;
- 374 (7) he has been dismissed (without being re-instated) by reason of misconduct from any paid employment where that dismissal has not been the subject of a finding of unfair dismissal by a tribunal or court<sup>22</sup>;
- 375 (8) his tenure of office as the chairman or as a member or director or governor of an NHS body has been terminated on the grounds that it was not in the interests of the health service<sup>23</sup> that he should continue to hold office in the body<sup>24</sup>;
- 376 (9) he is a person whose tenure of office as the chairman or as a member or director or governor of a health service body has been terminated on the grounds that<sup>25</sup> (a) it was not in the interests of, or conducive to, the good management of the body in question that he should continue to hold office<sup>26</sup>; (b) he failed, without reasonable cause, to attend any meeting of that body for a period of three months or more<sup>27</sup>; or (c) he failed to declare a pecuniary interest, or withdraw from consideration of any matter in which he had a pecuniary interest<sup>28</sup>;
- 377 (10) he is the subject of a national NHS disqualification<sup>29</sup>;
- 378 (11) he has been refused nomination or approval to fill a vacancy for a medical practitioner<sup>30</sup> and has not subsequently been approved or included in a primary care list<sup>31</sup>;

- 379 (12) he has been removed from, or refused admission to, a primary care list<sup>32</sup> and has not subsequently been included in such a list<sup>33</sup>; is contingently removed<sup>34</sup> from a primary care list<sup>35</sup>; or is suspended<sup>36</sup> from a primary care list<sup>37</sup>;
- 380 (13) he is a person whose registration as a provider or manager of an establishment or agency under the Care Standards Act 2000<sup>38</sup> has been cancelled by the registration authority<sup>39</sup> except in certain cases<sup>40</sup>;
- 381 (14) he is an employee of the Commission for Healthcare Audit and Inspection<sup>41</sup>; or
- 382 (15) he is the chairman or another member of the Independent Regulator of NHS Foundation Trusts<sup>42</sup>.

Where a person is disqualified under head (3) above by reason of having been adjudged bankrupt or having had a sequestration of his estate awarded, if the bankruptcy is annulled on the ground that he ought not to have been adjudged bankrupt or on the ground that his debts have been paid in full, the disqualification ceases on the date of annulment<sup>43</sup>; and if he is discharged, the disqualification ceases on the date of his discharge<sup>44</sup>. Where a person is disqualified under that head by reason of his having made a composition or arrangement with, or having granted a trust deed for, his creditors, if he pays his debts in full, the disqualification ceases on the date on which such payment is completed<sup>45</sup>; and in any other case, disqualification ceases on the expiry of a period of five years beginning with the date on which the terms of the deed of composition or arrangement or, as the case may be, the terms of the trust deed are fulfilled<sup>46</sup>.

Where a person is disqualified under head (5) or (6) above he may, after the expiry of two years beginning with the date on which he was removed from office or from being concerned in the management or control of any body, as the case may be, apply in writing<sup>47</sup> to the Secretary of State<sup>48</sup> to remove the disqualification, and the Secretary of State may direct that the disqualification is to cease for the purposes of his appointment to the Commission for Healthcare Audit and Inspection<sup>49</sup>. Where a person is disqualified under head (7) above he may, after the expiry of two years beginning with the date on which he was dismissed, apply in writing to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification is to cease<sup>50</sup>. Where a person is disqualified under head (8) or (9) above, the disqualification ceases on the expiry of a period of two years beginning with the date of the termination of his tenure of office or such longer period as the person<sup>51</sup> or body may specify when terminating his period of office, but the Secretary of State may, on application being made to him by the disqualified person, reduce the period of disqualification for the purposes of his appointment to the Commission<sup>52</sup>.

1 As to the meaning of 'member' see PARA 554 note 1.

2 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1). This provision is expressed to be subject to reg 5: see the text to notes 43-52. As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 As to the Secretary of State see PARA 6 note 8.

4 Ie any list maintained under the Protection of Children Act 1999 s 1: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 648.

5 Ie any list maintained under the Care Standards Act 2000 s 81: see **SOCIAL SERVICES AND COMMUNITY CARE**.

6 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (a).

7 For the purposes of the Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(1)(b), the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or

application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted: reg 4(2).

8 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(b)(i).

9 As to the meaning of 'British Islands' see PARA 15 note 8.

10 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(b)(ii).

11 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(b).

12 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(c)(i).

13 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(c)(ii). As to bankruptcy and arrangements and compositions with creditors see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

14 Ie under the Company Directors Disqualification Act 1986 (see **COMPANIES** vol 15 (2009) PARA 1575 et seq) or the Companies (Northern Ireland) Order 1986, SI 1986/1032 (NI 6).

15 Ie made under the Insolvency Act 1986 s 429(2)(b): see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 910.

16 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(d).

17 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(e)(i). As to the removal from office of a charity trustee or trustee for a charity see **CHARITIES** vol 8 (2010) PARAS 294, 566. As to the Charity Commissioners see **CHARITIES** vol 8 (2010) PARA 538 et seq.

18 Ie under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 s 7 (powers of the Court of Session to deal with management of charities).

19 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(e)(ii).

20 Ie under the Audit Commission Act 1998 Sch 1 para 4(4)(c) or (d): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 746.

21 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(f). As to the meaning of 'Audit Commission' see PARA 573 note 12.

22 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(g). For these purposes, a person is not to be treated as having been in paid employment by reason only of his having been the chairman or a member or director of a health service body other than an NHS foundation trust, or the chairman, or a governor or a non-executive director of an NHS foundation trust, or a member of the Audit Commission: reg 4(3) (amended by SI 2004/696). 'Health service body' means an NHS body; the dental practice board constituted under the National Health Service Act 1977 s 37(1) (repealed); the Independent Regulator of NHS Foundation Trusts; a health board or special health board constituted under the National Health Service (Scotland) Act 1978 s 2, or the Scottish dental practice board, the common services agency for the Scottish Health Service or an NHS trust constituted under, respectively, s 4, 10 or 12A of that Act; the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14); a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990, SI 1990/247 (NI 3); a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991, SI 1991/194 (NI 1): Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 1(2) (definition amended by SI 2004/696; SI 2005/1622). As to the meaning of 'NHS body' see PARA 8 note 2. As to NHS foundation trusts see PARA 174. As to the Independent Regulator of NHS Foundation Trusts see PARA 188.

23 As to the meaning of 'health service' see PARA 10 note 3.

24 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(h) (reg 4(1)(h), (i) amended by SI 2004/696).

25 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (i) (as amended: see note 24).

26 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (i)(i).

27 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (i)(ii). As to the meaning of 'month' see PARA 28 note 16.

28 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (i)(iii).

29 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (j)(i). 'National NHS disqualification' means: (1) a decision made by the Family Health Services Appeal Authority under the National Health Service Act 2006 s 159 or the National Health Service (Wales) Act 2006 s 115 (see PARA 402), or under regulations corresponding to those sections made under the National Health Service Act 2006 s 91(3) or the National Health Service (Wales) Act 2006 s 49(3) (see PARA 248) or the National Health Service Act 2006 s 106(3) or the National Health Service (Wales) Act 2006 s 63(3) (see PARA 283); (2) a decision under provisions in force in Scotland or Northern Ireland corresponding to the National Health Service Act 1977 s 49 (repealed); or (3) a decision by the NHS Tribunal which is treated as a national disqualification by the Family Health Services Appeal Authority by virtue of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001, SI 2001/3744, reg 6(4)(b) or the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002, SI 2002/1920, reg 6(4)(b): Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 1(2) (definition amended by SI 2005/3491); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the Family Health Services Appeal Authority see PARA 443.

30 le pursuant to regulations made under the National Health Service Act 1977 s 29B(2A) (repealed).

31 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (j)(ii) (amended by SI 2004/865; SI 2004/1016). 'Primary care list' means: (1) a list referred to in the National Health Service Act 2006 s 159(1) or the National Health Service (Wales) Act 2006 s 115(1) (see PARA 402); (2) a list of persons undertaking to provide general medical services prepared in accordance with regulations under the National Health Service Act 1977 s 29 (repealed) as the list existed on or before 31 March 2004; (3) a list of persons approved by a primary care trust for the purpose of assisting in the provision of general medical services prepared in accordance with regulations under s 43D(1) as the list existed on or before 31 March 2004; or (4) a services list referred to in the National Health Service (Primary Care) Act 1997 s 8ZA(1)(a) (repealed) as the list existed on or before 31 March 2004: Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 1(2) (definition substituted by SI 2004/865; SI 2004/1016); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to primary care trusts see PARA 111.

32 le on grounds corresponding to the conditions referred to in the National Health Service Act 2006 s 151(2), (3) or (4) or the National Health Service (Wales) Act 2006 s 107(2), (3), or (4): see PARA 388.

33 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (j)(iii); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

34 le under the National Health Service Act 2006 s 152 or the National Health Service (Wales) Act 2006 s 108 (see PARA 390), or regulations made under the National Health Service Act 2006 s 91 (see PARA 248), s 106 (see PARA 283) or s 149 (see PARA 344) or the corresponding provisions under the National Health Service (Wales) Act 2006.

35 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (j)(iv); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

36 le under: (1) the National Health Service Act 2006 s 154 or the National Health Service (Wales) Act 2006 s 110 (see PARA 394) or is treated as so suspended by virtue of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001, SI 2001/3744, reg 6(2) or the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002, SI 2002/1920, reg 6(2); or (2) regulations made under the National Health Service Act 2006 s 91 (see PARA 248), s 106 (see PARA 283) or s 149 (see PARA 344) or the corresponding provisions under the National Health Service (Wales) Act 2006; or (3) the corresponding provisions in Scotland and Northern Ireland.

37 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1) (j)(v); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

38 le under the Care Standards Act 2000 Pt 2 (ss 11-42): see PARAS 759-760.

39 le under the Care Standards Act 2000 s 14: see PARA 760.

40 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(k). The excepted cases are where: (1) that decision has been subject to a direction by the Tribunal given under the Care Standards Act 2000 s 21 (see PARA 761) that it is not to have effect (Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(k)(i)); (2) the cancellation was only by reason of an application for cancellation having been made by him pursuant to Care Standards Act 2000 s 15(1)(b) (see PARA 760) (Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(k)(ii)).

41 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(l).

42 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 4(1)(m) (added by SI 2004/696).

43 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 5(1)(a).

44 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 5(1)(b).

45 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 5(2)(a).

46 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 5(2)(b).

47 As to the meaning of 'writing' see PARA 7 note 2.

48 In relation to a member appointed under the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(1)(b) (see PARA 553), references in the Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 5 to the Secretary of State are to be construed as references to the Welsh Ministers: reg 1(3); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

49 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 5(3). Where the Secretary of State refuses an application to remove or to reduce the period of a disqualification, no further application may be made to him by that person until the expiry of a period of two years beginning with the date of the refusal and this provision applies to any subsequent application: reg 5(6).

50 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 5(4). This provision is expressed to be subject to reg 5(6): see note 49. See also note 48.

51 As to the meaning of 'person' see PARA 17 note 2.

52 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 5(5). This provision is expressed to be subject to reg 5(6): see note 49. See also note 48.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008,

SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

**555 Disqualification for appointment or from holding office**

TEXT AND NOTES--SI 2003/3279 revoked: SI 2009/462. The Secretary of State may by regulations make provision as to the circumstances in which a person is disqualified for appointment or from holding office as a member of the Care Quality Commission: see the Health and Social Care Act 2008 Sch 1 para 3(4).

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### **556. Suspension of members.**

Where it appears to the Secretary of State<sup>1</sup> in relation to a member of the Commission for Healthcare Audit and Inspection<sup>2</sup> that one of the specified conditions<sup>3</sup> is or may be satisfied<sup>4</sup>, the Secretary of State may suspend the member from office by giving him notice in writing<sup>5</sup> to that effect<sup>6</sup>. Such notice must give the reason for, and the period of, the suspension and the date that it is to begin<sup>7</sup>. The Secretary of State may before the period referred to in the notice has expired, extend, or further extend, the suspension for a further specified period<sup>8</sup>; or if it has expired, impose a further suspension for a specified period<sup>9</sup>, by giving the member notice in writing to that effect<sup>10</sup>. A member must cease to perform his functions as a member for the period of the suspension but the period of his term of office is not affected by the suspension<sup>11</sup>.

Where a member is suspended under these provisions, he may apply in writing to the Secretary of State to remove the suspension or to reduce its period, and the Secretary of State may so direct that the suspension is to cease or the period of it be reduced<sup>12</sup>.

1 In relation to a member appointed under the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(1)(b) (see PARA 553), references in the Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 6 to the Secretary of State are to be construed as references to the Welsh Ministers: reg 1(3); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'member' see PARA 554 note 1. As to the Secretary of State see PARA 6 note 8. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

2 As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 The specified conditions are those in the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 3(6): see PARA 553.

4 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 6(1).

5 As to the meaning of 'writing' see PARA 7 note 2.

6 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 6(2).

7 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 6(3).

8 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 6(4) (a).

9 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 6(4) (b).

10 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 6(4).

11 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 6(6). As to tenure of office see PARA 554.

12 Commission for Healthcare Audit and Inspection (Membership) Regulations 2003, SI 2003/3279, reg 6(5). Where the Secretary of State removes a suspension before the end of the period specified by him in a notice given under reg 6(2) (see the text to notes 5-6), or reduces its period, he must notify the member in writing to that effect: reg 6(7).

### **UPDATE**



## **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **556 Suspension of members**

TEXT AND NOTES--SI 2003/3279 revoked: SI 2009/462. The Secretary of State may by regulations make provision as to the circumstances in which a member is to be suspended from holding office as a member of the Care Quality Commission: see the Health and Social Care Act 2008 Sch 1 para 3(4).

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### **557. Remuneration of chairman and members.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> may pay to its chairman, or to any other member<sup>2</sup>, such remuneration and allowances as the Secretary of State<sup>3</sup> may determine<sup>4</sup>. If the Secretary of State so determines, the Commission must pay or make provision for the payment of such pension, allowance or gratuities as he may determine to or in respect of a person who is or has been the chairman or other member of the Commission<sup>5</sup>. If the Secretary of State determines that there are special circumstances that make it right for a person ceasing to hold office as chairman of the Commission to receive compensation, the Commission must pay to him, or make provision for the payment to him of, such compensation as the Secretary of State may determine<sup>6</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to the chairman and members of the Commission for Healthcare Audit and Inspection see PARA 553.

3 The Secretary of State must consult the Welsh Ministers before exercising any of his functions under the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 4: Sch 6 para 4(4); Government of Wales Act 2006 Sch 11 para 32. As to the Secretary of State see PARA 6 note 8. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

4 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 4(1).

5 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 4(2). See also note 3.

6 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 4(3). See also note 3.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **557 Remuneration of chairman and members**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 Sch 6 repealed: Health and Social Care Act 2008 Sch 5 para 52, Sch 15 Pt 1. As to the

remuneration and allowances of the chairman and members of the Care Quality Commission, see the Health and Social Care Act 2008 Sch 1 para 4.

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## **558. Employees.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> must appoint a chief executive (to be known as the 'Chief Inspector of Healthcare'), who is to be an employee of the Commission<sup>2</sup>. The Commission may appoint such other employees as it considers appropriate<sup>3</sup>. Employees of the Commission are to be appointed on such terms and conditions as it may determine<sup>4</sup>. Without prejudice to its other powers, the Commission may pay, or make provision for the payment of pensions, allowances or gratuities<sup>5</sup>, or compensation for loss of employment or reduction of remuneration<sup>6</sup>, to or in respect of its employees<sup>7</sup>.

- 1 As to the Commission for Healthcare Audit and Inspection see PARA 552.
- 2 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 5(1).
- 3 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 5(2).
- 4 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 5(3).
- 5 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 5(4)(a).
- 6 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 5(4)(b).
- 7 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 5(4).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

## **558 Employees**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 Sch 6 repealed: Health and Social Care Act 2008 Sch 5 para 52, Sch 15 Pt 1. For provision as to employees of the Care Quality Commission, see the Health and Social Care Act 2008 Sch 1 para 5.

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### **559. Procedure.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> may appoint such committees and sub-committees (which may consist of or include persons who are not members of the Commission<sup>2</sup>) as it thinks fit<sup>3</sup>; and pay such remuneration and allowances to members of its committees and sub-committees as it thinks fit<sup>4</sup>. The Commission may in all other respects regulate its own procedure<sup>5</sup>. The validity of the proceedings of the Commission is not affected by any defect in the appointment of a member or any vacancy in membership<sup>6</sup>.

The application of the seal of the Commission must be authenticated by the signature of any member of the Commission<sup>7</sup>, or of any other person who has been authorised by it (whether generally or specifically) for that purpose<sup>8</sup>. A document purporting to be duly executed under the seal of the Commission or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so signed or executed<sup>9</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to the chairman and members of the Commission for Healthcare Audit and Inspection see PARA 553.

3 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 6(1)(a).

4 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 6(1)(b).

5 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 6(2).

6 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 6(3).

7 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 11(a).

8 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 11(b). As to employees of the Commission see PARA 558.

9 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 12.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **559 Procedure**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003  
Sch 6 repealed: Health and Social Care Act 2008 Sch 5 para 52, Sch 15 Pt 1. See now  
the Health and Social Care Act 2008 Sch 1 paras 6, 7, 11 and 12.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(ii) The Commission for Healthcare Audit and Inspection/A. ESTABLISHMENT/560. Finance and accounts.

## **560. Finance and accounts.**

The Secretary of State<sup>1</sup> may make payments out of money provided by Parliament<sup>2</sup>, to the Commission for Healthcare Audit and Inspection<sup>3</sup> of such amounts, at such times and on such conditions (if any) as he considers appropriate<sup>4</sup>; and the Welsh Ministers<sup>5</sup> may make payments to the Commission of such amounts, at such times and on such conditions (if any) as they consider appropriate<sup>6</sup>. The Commission has no power to borrow money<sup>7</sup>; but the Secretary of State may, with the approval of the Treasury<sup>8</sup>, make loans out of money provided by Parliament to the Commission on such terms (including terms as to repayment and interest) as he may determine<sup>9</sup>, and the Welsh Ministers may make loans to the Commission on such terms (including terms as to repayment and interest) as they may determine<sup>10</sup>.

The Commission must keep its accounts, and must prepare annual accounts in respect of each financial year<sup>11</sup>, in such form as the Secretary of State may determine<sup>12</sup>. The Commission must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General<sup>13</sup> within such period after the end of the financial year to which the accounts relate as the Secretary of State may determine<sup>14</sup>. The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of the accounts and of his report before Parliament<sup>15</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.

3 As to the Commission for Healthcare Audit and Inspection see PARA 552.

4 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 9(1).

5 The functions in the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 9 were originally conferred on the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

6 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 9(2).

7 See the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 9(5).

8 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

9 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 9(3).

10 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 9(4).

11 'Financial year' means each period of twelve months ending with 31 March: see the Health and Social Care (Community Health and Standards) Act 2003 s 148.

12 See the Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 10(1), (2).

13 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

14 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 10(3).

15 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 10(4). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **560 Finance and accounts**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 Sch 6 repealed: Health and Social Care Act 2008 Sch 5 para 52, Sch 15 Pt 1. As to the finance and accounts of the Care Quality Commission, see the Health and Social Care Act 2008 Sch 1 paras 9, 10.



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## **B. FUNCTIONS**

### **561. Functions.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> has the general function of encouraging improvement in the provision of health care<sup>2</sup> by and for NHS bodies<sup>3</sup>. In exercising this and other<sup>4</sup> functions in relation to such provision, the Commission must be concerned in particular with: (1) the availability of, and access to, the health care<sup>5</sup>; (2) the quality and effectiveness of the health care<sup>6</sup>; (3) the economy and efficiency of the provision of the health care<sup>7</sup>; (4) the availability and quality of information provided to the public about the health care<sup>8</sup>; (5) the need to safeguard and promote the rights and welfare of children<sup>9</sup>; and the effectiveness of measures taken for this purpose by the body in question and any person<sup>10</sup> who provides, or is to provide, health care for that body<sup>11</sup>.

The Commission has specific functions in relation to the provision of health care, of publishing and reviewing data<sup>12</sup>, the conduct of reviews<sup>13</sup>, the co-ordination of reviews by other bodies<sup>14</sup>, the provision of information and advice to the Secretary of State and the Welsh Ministers<sup>15</sup>, and the promotion or undertaking of studies as to economy, efficiency and effectiveness of service provision<sup>16</sup>.

The Secretary of State may by regulations<sup>17</sup> provide that the Commission is to have such additional functions as may be prescribed<sup>18</sup> in relation to: (a) the provision of health care by or for NHS bodies<sup>19</sup>; (b) the improvement of economy, efficiency and effectiveness in the exercise of the functions of English NHS bodies<sup>20</sup>, and the financial or other management, or operations, of English NHS bodies<sup>21</sup>. The Secretary of State must consult the Independent Regulator of NHS Foundation Trusts<sup>22</sup> before making such provision in relation to NHS foundation trusts<sup>23</sup>; and must obtain the consent of the Welsh Ministers before making such provision in relation to health care provided by or for a Welsh NHS body<sup>24</sup> other than health care provided by or for an English NHS body or cross-border SHA<sup>25</sup>.

The Commission also has functions in respect of complaints about health services<sup>26</sup>, and the registration of independent health services and the maintenance of quality and standards in relation thereto<sup>27</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

3 Health and Social Care (Community Health and Standards) Act 2003 s 48(1). As to the meaning of 'NHS body' see PARA 548 note 1. The Secretary of State may make regulations requiring the Commission to devise and publish criteria for use in the exercise of this function: see s 59; and PARA 574. As to the duty of the Commission to have regard to government policy in the exercise of its functions see s 130; and PARA 586. As to the discharge generally by the Commission of its functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see s 132; and PARA 587. As to the Secretary of State see PARA 6 note 8. As to the functions of the Welsh Ministers in relation to health care in Wales see PARAS 593, 594. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the meaning of 'Wales' see PARA 6 note 2. As to the functions of the Wales Centre for Health see PARA 595.

4 The functions under the Health and Social Care (Community Health and Standards) Act 2003 ss 49-56: see PARAS 563-572.

5 Health and Social Care (Community Health and Standards) Act 2003 s 48(2)(a).

- 6 Health and Social Care (Community Health and Standards) Act 2003 s 48(2)(b).
- 7 Health and Social Care (Community Health and Standards) Act 2003 s 48(2)(c).
- 8 Health and Social Care (Community Health and Standards) Act 2003 s 48(2)(d).
- 9 Health and Social Care (Community Health and Standards) Act 2003 s 48(2)(e).
- 10 As to the meaning of 'person' see PARA 17 note 2.
- 11 Health and Social Care (Community Health and Standards) Act 2003 s 48(2)(f).
- 12 See the Health and Social Care (Community Health and Standards) Act 2003 ss 49, 55; and PARA 563.
- 13 See the Health and Social Care (Community Health and Standards) Act 2003 ss 50-53B; and PARAS 564-570.
- 14 See the Health and Social Care (Community Health and Standards) Act 2003 s 56; and PARA 572.
- 15 See the Health and Social Care (Community Health and Standards) Act 2003 s 54; and PARA 571.
- 16 See the Health and Social Care (Community Health and Standards) Act 2003 s 57; and PARA 573.
- 17 As to the making of regulations see PARA 551. At the date at which this volume states the law no such regulations had been made.
- 18 'Prescribed' means prescribed by regulations made by the Secretary of State: Health and Social Care (Community Health and Standards) Act 2003 s 148.
- 19 Health and Social Care (Community Health and Standards) Act 2003 s 58(1)(a). In relation to any function conferred on the Commission under s 58(1)(a) the regulations may provide that any one or more of s 59(1)(a), (b) or (2) have effect as if it included a reference to the exercise of that function: see s 59(3); and PARA 574.
- 20 Health and Social Care (Community Health and Standards) Act 2003 s 58(1)(b)(i). As to the meaning of 'English NHS body' see PARA 548 note 1.
- 21 Health and Social Care (Community Health and Standards) Act 2003 s 58(1)(b)(ii).
- 22 As to the Independent Regulator of NHS Foundation Trusts see PARA 188.
- 23 Health and Social Care (Community Health and Standards) Act 2003 s 58(2). As to NHS foundation trusts see PARA 174. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.
- 24 As to the meaning of 'Welsh NHS body' see PARA 548 note 1.
- 25 Health and Social Care (Community Health and Standards) Act 2003 s 58(3); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'cross-border SHA' see PARA 548 note 1.
- 26 Ie under the National Health Service (Complaints) Regulations 2004, SI 2004/1768: see PARA 608 et seq.
- 27 Ie under the Care Standards Act 2000: see PARA 748 et seq.

## UPDATE

### 552-592 [The Care Quality Commission]

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see

Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

## **561 Functions**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 ss 48, 58 repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. As to the functions of the Care Quality Commission, see ss 1-7; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.1.

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## **562. Discharge of functions.**

It is the duty of the Commission for Healthcare Audit and Inspection<sup>1</sup> to carry out its functions effectively, efficiently and economically<sup>2</sup>. The Commission may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions<sup>3</sup>. That includes, in particular: (1) co-operating with other public authorities in the United Kingdom<sup>4</sup>; (2) acquiring and disposing of land<sup>5</sup> and other property<sup>6</sup>; (3) entering into contracts<sup>7</sup>; and (4) providing training<sup>8</sup>.

The Commission may arrange for any of its committees, sub-committees<sup>9</sup>, members<sup>10</sup> or employees<sup>11</sup>, or any other person<sup>12</sup>, to exercise any of its functions on its behalf<sup>13</sup>. The Commission may arrange for such persons as it thinks fit to assist it in the discharge of any of its functions in relation to a particular case or class of case<sup>14</sup>.

In carrying out its functions the Commission must co-operate with certain other bodies<sup>15</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 2(3). As to the functions of the Commission see PARAS 561.

3 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 2(1).

4 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 2(2)(a). As to the meaning of 'United Kingdom' see PARA 15 note 8.

5 As to the meaning of 'land' see PARA 24 note 2.

6 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 2(2)(b).

7 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 2(2)(c).

8 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 2(2)(d).

9 As to committees and sub-committees see PARA 559.

10 As to membership of the Commission see PARA 553.

11 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 7(1)(a). As to employees see PARA 558.

12 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 7(1)(b). If the Commission so arranges for the discharge of any function, the arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons: Sch 6 para 7(2). As to the meaning of 'person' see PARA 17 note 2.

13 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 7(1).

14 Health and Social Care (Community Health and Standards) Act 2003 Sch 6 para 8(1). Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons: Sch 6 para 8(2).

15 See PARA 581.

## **UPDATE**

## **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **562 Discharge of functions**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 Sch 6 repealed: Health and Social Care Act 2008 Sch 5 para 52, Sch 15 Pt 1. See now the Health and Social Care Act 2008 Sch 1 para 2.

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### **563. National performance data and data reviews.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> has the function<sup>2</sup> of publishing data relating to the provision of health care<sup>3</sup> by and for NHS bodies<sup>4</sup>.

The Commission may review: (1) the quality of data obtained by others in relation to the provision of health care by and for NHS bodies<sup>5</sup>; (2) the methods used in the collection and analysis of such data<sup>6</sup>; and (3) the validity of conclusions drawn from such data<sup>7</sup>. Where the Commission conducts such a review<sup>8</sup> it must publish a report<sup>9</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see the Health and Social Care (Community Health and Standards) Act 2003 s 132; and PARA 587. As to the Secretary of State see PARA 6 note 8. As to the duty of the Commission to have regard to government policy in the exercise of its functions see s 130; and PARA 586.

3 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

4 Health and Social Care (Community Health and Standards) Act 2003 s 49. As to the meaning of 'NHS body' see PARA 548 note 1. The Secretary of State may make regulations requiring the Commission to devise and publish criteria for use in the exercise of this function: see s 59; and PARA 574.

5 Health and Social Care (Community Health and Standards) Act 2003 s 55(1)(a).

6 Health and Social Care (Community Health and Standards) Act 2003 s 55(1)(b).

7 Health and Social Care (Community Health and Standards) Act 2003 s 55(1)(c).

8 Ie a review under the Health and Social Care (Community Health and Standards) Act 2003 s 55.

9 Health and Social Care (Community Health and Standards) Act 2003 s 55(2). The Commission must make copies of any such report available for inspection at its offices: see PARA 577.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **563 National performance data and data reviews**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 ss 49, 55 repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. See now the Health and Social Care Act 2008 s 57 (reviews of data, studies and research), and s 58 (publication of information). As to the duty of the Commission to publish a document setting out the reviews that it proposes to conduct under s 57, see s 81.

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#### **564. Annual reviews.**

In each financial year<sup>1</sup> the Commission for Healthcare Audit and Inspection<sup>2</sup> must conduct a review of the provision of health care<sup>3</sup> by and for each English NHS body<sup>4</sup>, and each cross-border SHA<sup>5</sup>, and must award a performance rating to each such body<sup>6</sup>. The Commission is to exercise this function by reference to criteria from time to time devised by it and approved by the Secretary of State<sup>7</sup>, and must publish those criteria<sup>8</sup>. In exercising these functions in relation to any health care, the Commission must take into account the standards set out in published statements<sup>9</sup>, and any code of practice<sup>10</sup> relating to the prevention and control of health care associated infections<sup>11</sup>.

For the purposes of conducting such a review the Commission may<sup>12</sup> conduct an inspection of the body being reviewed<sup>13</sup>, and any person<sup>14</sup> who provides, or is to provide, health care for that body (wherever the health care is or is to be provided)<sup>15</sup>.

1 As to the meaning of 'financial year' see PARA 560 note 11.

2 As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

4 Health and Social Care (Community Health and Standards) Act 2003 s 50(1)(a). As to the meaning of 'English NHS body' see PARA 548 note 1. As to reports following a review under s 50 see s 53; and PARA 568.

5 Health and Social Care (Community Health and Standards) Act 2003 s 50(1)(b). As to the meaning of 'cross-border SHA' see PARA 548 note 1.

6 Health and Social Care (Community Health and Standards) Act 2003 s 50(1). The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the award of a performance rating: s 50(6). As to the making of regulations see PARA 551. At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 6 note 8. As to reports where a review reveals significant failings in service provision see PARA 568.

7 Health and Social Care (Community Health and Standards) Act 2003 s 50(2). As to functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see s 132; and PARA 587. As to the duty of the Commission to have regard to government policy in the exercise of its functions see s 130; and PARA 586.

8 See the Health and Social Care (Community Health and Standards) Act 2003 s 50(3).

9 Health and Social Care (Community Health and Standards) Act 2003 s 50(4)(a) (s 50(4) substituted, (4A) added by the Health Act 2006 s 15(1), (2)). The standards referred to are those set out in statements published under the Health and Social Care (Community Health and Standards) Act 2003 s 46: see PARA 549.

10 Issued under the Health and Social Care (Community Health and Standards) Act 2003 s 47A: see PARA 550.

11 Health and Social Care (Community Health and Standards) Act 2003 s 50(4)(b) (as substituted: see note 9). In conducting a review under s 50(1) (see the text to notes 1-6) in relation to a particular body to which provisions of such a code apply, the Commission must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body: s 50(4A) (as added: see note 9). As to improvement notices in respect of failings in connection with such a code of practice see PARA 569.

12 Is subject to the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 (ss 41-149).



- 13 Health and Social Care (Community Health and Standards) Act 2003 s 50(5)(a).
- 14 As to the meaning of 'person' see PARA 17 note 2.
- 15 Health and Social Care (Community Health and Standards) Act 2003 s 50(5)(b).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **564-570 Annual reviews ... Action following service of improvement notices**

Health and Social Care (Community Health and Standards) Act 2003 ss 50-53B repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. SI 2004/557 revoked: SI 2009/462. Periodic reviews must now be conducted by the Care Quality Commission: see the Health and Social Care Act 2008 s 46 et seq; and PARA 564A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(ii) The Commission for Healthcare Audit and Inspection/B. FUNCTIONS/564A. Reviews and investigations by the Care Quality Commission.

#### **564A. Reviews and investigations by the Care Quality Commission.**

In respect of each primary care trust (see PARA 111) the Care Quality Commission must conduct reviews of the provision of health care provided or commissioned by the trust, assess the trust's performance following each such review, and publish a report of its assessment: Health and Social Care Act 2008 s 46(1). In respect of each English NHS provider the Commission must conduct reviews of the provision of health care by the provider, assess the provider's performance following each such review, and publish a report of its assessment: s 46(2). 'English NHS provider' means a (1) primary care trust; (2) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England; or (3) an NHS foundation trust: s 97(1). The assessment of a body's performance is to be by reference to such indicators of quality as the Secretary of State may devise or approve: s 46(4). The Secretary of State may direct the Commission to devise indicators for the purposes of s 46(4) and submit them to the Secretary of State for approval: s 46(5). The Commission must prepare a statement describing the method that it proposes to use in assessing and evaluating a body's performance under this provision, and submit the statement to the Secretary of State for approval: s 46(6). Different indicators may be devised or approved, and different methods may be described, for different cases: s 46(7). The Commission must publish the indicators devised or approved from time to time by the Secretary of State, and the method statement approved from time to time by the Secretary of State: s 46(8). The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report under this provision: s 46(9).

The Commission must prepare a document setting out the frequency with which reviews under s 46 are to be conducted and the period to which they are to relate, and submit the document to the Secretary of State for approval: Health and Social Care Act 2008 s 47(1). The document may make different provision for different cases and the Commission may revise the document from time to time with the approval of the Secretary of State: s 47(2), (3). The Commission must publish the document as approved by the Secretary of State and as revised from time to time: s 47(4).

The Commission may conduct any special review or investigation, and must do so if the Secretary of State so requests: s 48(1). A special review or investigation is a review (other than a periodic review) of, or an investigation into, the provision of NHS care, or the exercise of functions by English health authorities: s 48(2)(a), (c). Such a review or investigation may relate (a) to the overall provision of NHS care or to the provision of NHS care of a particular description; (b) to the overall exercise of functions or to the exercise of functions of a particular description; (c) to the provision of care or services or the exercise of functions by bodies or persons generally or by particular bodies or persons: see s 48(3). Where the Commission conducts a review or investigation under this provision, it must publish a report: s 48(4). The Commission must consider whether the report raises anything on which it ought to give advice to the Secretary of State under s 53(2) (see PARA 571): s 48(5). The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report under s 48(4): s 48(7). For these purposes 'English health authority' means a strategic health authority, or a special health authority performing functions only or mainly in respect of England: s 48(8). As to strategic health authorities see PARA 94 et seq. As to special

health authorities see PARA 136. As to the duty of the Commission to publish a document setting out the special reviews and investigations that it proposes to conduct under s 48, see s 81.

The Secretary of State may by regulations require the Commission to conduct periodic reviews of the carrying on of regulated activities by registered service providers, and either publish reports of such reviews, or assess the performance of registered service providers following such reviews and publish reports of its assessment: s 49(1). Such regulations may require the Commission to conduct periodic reviews in relation to (i) all regulated activities or regulated activities of a particular description; (ii) all registered service providers or particular registered service providers; (iii) the whole of a regulated activity or a particular aspect of it: s 49(2). In the case of a regulated activity carried on by a Primary Care Trust, another English NHS provider or an English local authority, s 49(1) does not apply to the carrying on of that activity by that body to the extent that the carrying on of that activity by that body is already subject to periodic review under s 46, but this does not prevent the Secretary of State from requiring the Commission to conduct periodic reviews of a particular aspect of the activity as carried on by that body: s 49(3). If regulations under s 49(1) require the Commission to conduct periodic reviews, ss 46(4)-(9), 47 have effect in relation to the reviews as they have effect in relation to reviews under s 46: s 49(4). In s 49, 'registered service provider' means a person registered under Pt 1 Ch 2 (ss 8-44) (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A) as a service provider: s 49(5).

If there are failings with regard to English NHS bodies, their performance is managed by strategic health authorities on behalf of the Secretary of State: see PARA 105 et seq. Following a review under s 46 or 49, or a review or investigation under s 48, the Commission must inform the Welsh Ministers if it considers that (i) there are significant failings in relation to the provision of health care by or pursuant to arrangements made by a Welsh NHS body; (ii) there are significant failings in the running of a Welsh NHS body; or (iii) there are significant failings in the running of a body, or the practice of an individual, providing health care pursuant to arrangements made by a Welsh NHS body: s 51(1). The Commission may also recommend to the Welsh Ministers that, with a view to remedying those failings, the Welsh Ministers take special measures in a case falling within head (i) or (ii), in relation to the Welsh NHS body concerned, and in a case falling within head (iii), in relation to the body or individual concerned (except an English NHS body or a cross-border Special Health Authority): s 51(2). For these purposes 'Welsh NHS body' has the same meaning as in the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 (41-149) (see PARA 548 NOTE 1): Health and Social Care Act 2008 s 51(3). As to the corresponding duty on Welsh Ministers to report failings in English NHS care to the Secretary of State see the Health and Social Care (Community Health and Standards) Act 2003 s 71; and PARA 594.

## UPDATE

### 552-592 [The Care Quality Commission]

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

**564-570 Annual reviews ... Action following service of improvement notices**

Health and Social Care (Community Health and Standards) Act 2003 ss 50-53B  
repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. SI 2004/557  
revoked: SI 2009/462. Periodic reviews must now be conducted by the Care Quality  
Commission: see the Health and Social Care Act 2008 s 46 et seq; and PARA 564A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(ii) The Commission for Healthcare Audit and Inspection/B. FUNCTIONS/565. Reviews: England and Wales.

### **565. Reviews: England and Wales.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> has the function<sup>2</sup> of conducting reviews of: (1) the overall provision of health care<sup>3</sup> by and for NHS bodies<sup>4</sup>; (2) the overall provision of particular kinds of health care by and for NHS bodies<sup>5</sup>; (3) the provision of health care, or a particular kind of health care, by and for NHS bodies of a particular description<sup>6</sup>. If the Secretary of State<sup>7</sup> so requests, the Commission must conduct a review under head (1) above<sup>8</sup>, a review under head (2) above of the overall provision of a kind of health care specified in the request<sup>9</sup>, or a review under head (3) above of the provision of health care, or health care of a kind specified in the request, by or for NHS bodies of a description so specified<sup>10</sup>.

In conducting a review in relation to any health care the Commission must take into account: (a) the standards set out in published statements<sup>11</sup> and any code of practice relating to the prevention and control of health care associated infections<sup>12</sup>, where the health care is provided by or for an English NHS body or cross-border SHA<sup>13</sup>; (b) the standards set out in published statements<sup>14</sup>, where the health care is provided by or for a Welsh NHS body<sup>15</sup>. For the purposes of a review the Commission may carry out an inspection of any NHS body<sup>16</sup>, and any person<sup>17</sup> who provides, or is to provide, health care for an NHS body (wherever the health care is or is to be provided)<sup>18</sup>. Where the Commission conducts a review it must publish a report<sup>19</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 The Secretary of State may make regulations requiring the Commission to devise and publish criteria for use in the exercise of this function: see the Health and Social Care (Community Health and Standards) Act 2003 s 59; and PARA 574. As to the duty of the Commission to have regard to government policy in the exercise of this function see s 130; and PARA 586. As to the Secretary of State see PARA 6 note 8. As to functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see PARA 587.

3 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

4 Health and Social Care (Community Health and Standards) Act 2003 s 51(1)(a). As to the meaning of 'NHS body' see PARA 548 note 1.

5 Health and Social Care (Community Health and Standards) Act 2003 s 51(1)(b).

6 Health and Social Care (Community Health and Standards) Act 2003 s 51(1)(c). As to the function of the Commission to conduct further reviews in relation to England see PARA 566.

7 The Secretary of State must consult the Welsh Ministers before making a request under the Health and Social Care (Community Health and Standards) Act 2003 s 51(2): s 51(3); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

8 Health and Social Care (Community Health and Standards) Act 2003 s 51(2)(a).

9 Health and Social Care (Community Health and Standards) Act 2003 s 51(2)(b).

10 Health and Social Care (Community Health and Standards) Act 2003 s 51(2)(c).

11 I.e. the standards set out in statements published under the Health and Social Care (Community Health and Standards) Act 2003 s 46: see PARA 549.

12 I.e. any code of practice issued under the Health and Social Care (Community Health and Standards) Act 2003 s 47A: see PARA 550.

13 Health and Social Care (Community Health and Standards) Act 2003 s 51(4)(a) (amended by the Health Act 2006 s 15(1), (3)). As to the meanings of 'English NHS body' and 'cross-border SHA' see PARA 548 note 1. As to improvement notices in respect of failings in connection with a code of practice relating to the prevention and control of health care associated infections see PARA 569.

14 le the standards set out in statements published under the Health and Social Care (Community Health and Standards) Act 2003 s 47: see PARA 549.

15 Health and Social Care (Community Health and Standards) Act 2003 s 51(4)(b). As to the meaning of 'Welsh NHS body' see PARA 548 note 1.

16 Health and Social Care (Community Health and Standards) Act 2003 s 51(5)(a).

17 As to the meaning of 'person' see PARA 17 note 2.

18 Health and Social Care (Community Health and Standards) Act 2003 s 51(5)(b).

19 Health and Social Care (Community Health and Standards) Act 2003 s 51(6). The Commission must make copies of any such report available for inspection at its offices: see PARA 577. The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report: s 51(7). As to the making of regulations see PARA 551. At the date at which this volume states the law no such regulations had been made. As to reports where a review reveals significant failings in service provision see PARA 568.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **564-570 Annual reviews ... Action following service of improvement notices**

Health and Social Care (Community Health and Standards) Act 2003 ss 50-53B repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. SI 2004/557 revoked: SI 2009/462. Periodic reviews must now be conducted by the Care Quality Commission: see the Health and Social Care Act 2008 s 46 et seq; and PARA 564A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(ii) The Commission for Healthcare Audit and Inspection/B. FUNCTIONS/566. Reviews and investigations: England.

## **566. Reviews and investigations: England.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> has the function<sup>2</sup> of conducting other reviews<sup>3</sup> of, and investigations into, the provision of health care<sup>4</sup> by and for English NHS bodies<sup>5</sup> and cross-border SHAs<sup>6</sup>. The Commission may in particular conduct: (1) a review of the overall provision of health care by and for English NHS bodies and cross-border SHAs<sup>7</sup>; (2) a review of the overall provision of a particular kind of health care by and for English NHS bodies and cross-border SHAs<sup>8</sup>; (3) a review of, or investigation into, the provision of any health care by or for a particular English NHS body or cross-border SHA<sup>9</sup>. The Commission also has the function of conducting reviews of: (a) the arrangements made by English NHS bodies and cross-border SHAs for the purpose of discharging their duty<sup>10</sup> to monitor and improve the quality of health care<sup>11</sup>; (b) the arrangements made by particular English NHS bodies and cross-border SHAs for the purpose of discharging that duty<sup>12</sup>. If the Secretary of State so requests, the Commission must conduct a review under head (1) above<sup>13</sup>; a review under head (2) above of the overall provision of a kind of health care specified in the request<sup>14</sup>; or a review or investigation under head (3) above, or a review under head (a) or (b) above, in relation to the provision of such health care by or for such body as may be specified in the request<sup>15</sup>.

In exercising these functions in relation to any health care, the Commission must take into account the standards set out in published statements<sup>16</sup>, and any code of practice<sup>17</sup> relating to the prevention and control of health care associated infections<sup>18</sup>. For the purposes of a review the Commission may carry out an inspection of any English NHS body or cross-border SHA<sup>19</sup>, and any person<sup>20</sup> who provides, or is to provide, health care for such a body (wherever the health care is or is to be provided)<sup>21</sup>. Where the Commission conducts a review or investigation it must publish a report<sup>22</sup>.

The Secretary of State may by regulations require an NHS body to publish a statement as to the action it proposes to take as a result of any review or investigation conducted in relation to it<sup>23</sup>. The regulations may make provision: (i) as to the matters with which a statement under the regulations must deal<sup>24</sup>; (ii) as to the time by which any such statement must be published<sup>25</sup>; (iii) requiring an NHS body, before publishing any such statement, to obtain the consent of any person specified in the regulations<sup>26</sup>; (iv) requiring the NHS body publishing any such statement to send a copy of it to any person so specified<sup>27</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 The Secretary of State may make regulations requiring the Commission to devise and publish criteria for use in the exercise of its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 52: see s 59; and PARA 574. As to the Secretary of State see PARA 6 note 8. As to functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see s 132; and PARA 587. As to the duty of the Commission to have regard to government policy in the exercise of its functions see s 130; and PARA 586.

3 As to the power of the Commission to conduct reviews generally see PARA 565.

4 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

5 As to the meaning of 'English NHS body' see PARA 548 note 1.

- 6 Health and Social Care (Community Health and Standards) Act 2003 s 52(1). As to the meaning of 'cross-border SHA' see PARA 548 note 1. As to reviews relating to Wales see PARA 593.
- 7 Health and Social Care (Community Health and Standards) Act 2003 s 52(2)(a).
- 8 Health and Social Care (Community Health and Standards) Act 2003 s 52(2)(b).
- 9 Health and Social Care (Community Health and Standards) Act 2003 s 52(2)(c).
- 10 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 45: see PARA 548.
- 11 Health and Social Care (Community Health and Standards) Act 2003 s 52(3)(a) (s 52(3) substituted by the Health Act 2006 s 15(1), (4)).
- 12 Health and Social Care (Community Health and Standards) Act 2003 s 52(3)(b) (as substituted: see note 11).
- 13 Health and Social Care (Community Health and Standards) Act 2003 s 52(4)(a).
- 14 Health and Social Care (Community Health and Standards) Act 2003 s 52(4)(b).
- 15 Health and Social Care (Community Health and Standards) Act 2003 s 52(4)(c).
- 16 Health and Social Care (Community Health and Standards) Act 2003 s 52(5)(a) (s 52(5) substituted, (5A) added, by the Health Act 2006 s 15(1), (5)). The standards referred to are those set out in statements published under the Health and Social Care (Community Health and Standards) Act 2003 s 46: see PARA 549.
- 17 Ie issued under the Health and Social Care (Community Health and Standards) Act 2003 s 47A: see PARA 550.
- 18 Health and Social Care (Community Health and Standards) Act 2003 s 52(5)(b) (as substituted: see note 16). In conducting a review under s 52(3) (see the text to notes 10-12) in relation to a particular body to which provisions of such a code apply, the Commission must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body: s 52(5A) (as added: see note 16). As to improvement notices in respect of failings in connection with such a code of practice see PARA 569.
- 19 Health and Social Care (Community Health and Standards) Act 2003 s 52(6)(a).
- 20 As to the meaning of 'person' see PARA 17 note 2.
- 21 Health and Social Care (Community Health and Standards) Act 2003 s 52(6)(b).
- 22 Health and Social Care (Community Health and Standards) Act 2003 s 52(7). The Commission must make copies of any such report available for inspection at its offices: see PARA 577. The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report: s 52(8). As to the making of regulations see PARA 551. At the date at which this volume states the law no such regulations had been made. As to reports where a review reveals significant failings in service provision see PARA 568.
- 23 Health and Social Care (Community Health and Standards) Act 2003 s 52(9). The Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, have been made: see PARA 567.
- 24 Health and Social Care (Community Health and Standards) Act 2003 s 52(10)(a).
- 25 Health and Social Care (Community Health and Standards) Act 2003 s 52(10)(b).
- 26 Health and Social Care (Community Health and Standards) Act 2003 s 52(10)(c).
- 27 Health and Social Care (Community Health and Standards) Act 2003 s 52(10)(d).

## UPDATE

### 552-592 [The Care Quality Commission]



The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

#### **564-570 Annual reviews ... Action following service of improvement notices**

Health and Social Care (Community Health and Standards) Act 2003 ss 50-53B repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. SI 2004/557 revoked: SI 2009/462. Periodic reviews must now be conducted by the Care Quality Commission: see the Health and Social Care Act 2008 s 46 et seq; and PARA 564A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(ii) The Commission for Healthcare Audit and Inspection/B. FUNCTIONS/567. Statement of action to be taken as a result of a review or investigation.

### **567. Statement of action to be taken as a result of a review or investigation.**

Where the Commission for Healthcare Audit and Inspection<sup>1</sup> has conducted: (1) a review of, or investigation into<sup>2</sup>, the provision of health care<sup>3</sup> by or for a particular English NHS body<sup>4</sup> or cross-border SHA<sup>5</sup>; or (2) a review<sup>6</sup> of the arrangements made by an English NHS body or cross-border SHA for the purpose of discharging its duty<sup>7</sup> to monitor and improve the quality of health care<sup>8</sup>, and has published a report relating to that review or investigation, the English NHS body or cross-border SHA in question must, in accordance with the following provisions, publish a statement as to the action it proposes to take as a result of the review or investigation<sup>9</sup>.

Before an English NHS body (other than an NHS foundation trust<sup>10</sup>) or cross-border SHA publishes the statement, it must obtain consent to publication from the appropriate person<sup>11</sup>. An English NHS body (other than an NHS foundation trust) must publish the statement within the period of seven days beginning with the date on which it is informed by the appropriate person that that person consents to publication of the statement in the form<sup>12</sup> in which that body proposes to publish it<sup>13</sup>. A cross-border SHA must publish the statement within the period of seven days beginning with the date on which it is informed by the Secretary of State and the Welsh Ministers that those persons consent to publication of the statement in the form<sup>14</sup> in which that cross-border SHA proposes to publish it or, where the cross-border SHA is so informed by each of those persons on different dates, within the period of seven days beginning with the later of those dates<sup>15</sup>. An NHS foundation trust must publish the statement within the period of 56 days beginning with the date on which the Commission for Healthcare Audit and Inspection's report is published<sup>16</sup>.

The English NHS body or cross-border SHA in question must send a copy of the published statement to: (a) the Commission for Healthcare Audit and Inspection<sup>17</sup>; (b) in the case of an NHS foundation trust, the Independent Regulator of NHS Foundation Trusts<sup>18</sup> and the relevant primary care trust<sup>19</sup>; (c) in the case of an NHS trust, the relevant primary care trust and the Secretary of State<sup>20</sup>; (d) in the case of a primary care trust, the Secretary of State<sup>21</sup>; and (e) any other person or body exercising statutory functions to whom the English NHS body or cross-border SHA in question considers that the statement should be copied<sup>22</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 52(2)(c): see PARA 566.

3 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

4 As to the meaning of 'English NHS body' see PARA 548 note 1.

5 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(1)(a). As to the meaning of 'cross-border SHA' see PARA 548 note 1.

6    Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 52(3): see PARA 566.

7    Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 45: see PARA 548.

8    Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(1)(b).

9    Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(1).

10   As to NHS foundation trusts see PARA 174.

11   See the Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(2). Where consent to publication is so required, the English NHS body or cross-border SHA must, within the period of 28 days beginning with the date on which the Commission's report is published, prepare a draft of the statement and send the draft to the appropriate person with a request to that person to consent to publication in the form of the draft, or to propose changes to it: reg 3(3). 'The appropriate person' means: (1) in the case of an NHS trust or primary care trust, the relevant strategic health authority (reg 3(2)(a)); (2) in the case of a strategic health authority, the Secretary of State (reg 3(2)(b)); (3) in the case of a special health authority performing functions only or mainly in respect of England, the Secretary of State (reg 3(2)(c)); (4) in the case of a cross-border SHA, the Secretary of State and the Welsh Ministers (reg 3(2)(d); Government of Wales Act 2006 Sch 11 para 32). 'Relevant strategic health authority' means: (a) in relation to a primary care trust where the area of the trust falls wholly within the area of a strategic health authority, that authority; or where the area of the trust falls within the areas of two or more strategic health authorities, each of those authorities; and (b) in relation to an NHS trust or NHS foundation trust, the strategic health authority in the area of which all or most of the hospitals, establishments and facilities of the NHS trust or NHS foundation trust are situated: reg 1(3). A reference to the area of a primary care trust, or of a strategic health authority, is a reference to the area for which the trust or authority is established: reg 1(4). As to NHS trusts see PARA 155. As to primary care trusts see PARA 111. As to strategic health authorities see PARA 94 et seq. As to the Secretary of State see PARA 6 note 8. As to special health authorities see PARA 136. As to the meaning of 'England' see PARA 6 note 2. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. As to the meaning of 'person' see PARA 17 note 2.

12   Ie whether or not that form is different from the form of the draft sent to that person under the Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(3): see note 11.

13   Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(4).

14   Ie whether or not that form is different from the form of the draft sent to those persons under the Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(3): see note 11.

15   Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(5); Government of Wales Act 2006 Sch 11 para 32.

16   Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(6).

17 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(7)(a).

18 As to the Independent Regulator of NHS Foundation Trusts see PARA 188.

19 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(7)(b). 'Relevant primary care trust' means, in relation to an NHS trust or NHS foundation trust, any primary care trust the area of which falls wholly or partly within the area of the relevant strategic health authority for that NHS trust or NHS foundation trust, where that primary care trust has made arrangements to provide services with the NHS trust or NHS foundation trust: reg 1(3).

20 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(7)(c).

21 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(7)(d).

22 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 3(7)(e).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **564-570 Annual reviews ... Action following service of improvement notices**

Health and Social Care (Community Health and Standards) Act 2003 ss 50-53B repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. SI 2004/557 revoked: SI 2009/462. Periodic reviews must now be conducted by the Care Quality Commission: see the Health and Social Care Act 2008 s 46 et seq; and PARA 564A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(ii) The Commission for Healthcare Audit and Inspection/B. FUNCTIONS/568. Reports as to failings.

### **568. Reports as to failings.**

Where the Commission for Healthcare Audit and Inspection<sup>1</sup> conducts an annual review<sup>2</sup>, a review<sup>3</sup> of the provision of health care<sup>4</sup> by or for NHS bodies<sup>5</sup>, or a review<sup>6</sup> or investigation of health care provision by or for English NHS bodies<sup>7</sup> or cross-border SHAs<sup>8</sup>, the Commission must make a report to the Secretary of State if it is of the view that: (1) there are significant failings in relation to the provision of health care by or for an English NHS body or cross-border SHA<sup>9</sup>; (2) there are significant failings in the running of an English NHS body or cross-border SHA<sup>10</sup>; or (3) there are significant failings in the running of any body, or the practice of any individual, providing health care for an English NHS body or cross-border SHA<sup>11</sup>. Such a report may include a recommendation that, with a view to remedying the failings in question, the Secretary of State take special measures in relation to: (a) in a case falling within head (1) or (2) above, the English NHS body or cross-border SHA in question<sup>12</sup>; (b) in a case falling within head (3) above, any person<sup>13</sup>, other than a Welsh NHS body<sup>14</sup>, referred to in that head<sup>15</sup>.

The Commission must also report to the Welsh Ministers<sup>16</sup> where it is of the view that: (i) there are significant failings in relation to the provision of health care by or for a Welsh NHS body<sup>17</sup>; (ii) there are significant failings in the running of a Welsh NHS body<sup>18</sup>; or (iii) there are significant failings in the running of any body, or the practice of any individual, providing health care for a Welsh NHS body<sup>19</sup>. Such a report may include a recommendation that, with a view to remedying the failings in question, the Welsh Ministers take special measures in relation to in a case falling within head (i) or (ii) above, the Welsh NHS body in question<sup>20</sup>; and in a case falling within head (iii) above, any person, other than an English NHS body or cross-border SHA, referred to in that head<sup>21</sup>.

The Commission must also make a report to the Independent Regulator of NHS Foundation Trusts<sup>22</sup> where it is of the view that: (A) there are significant failings in relation to the provision of health care by or for an NHS foundation trust<sup>23</sup>; (B) there are significant failings in the running of an NHS foundation trust<sup>24</sup>; or (C) there are significant failings in the running of any body, or the practice of any individual, providing health care for an NHS foundation trust<sup>25</sup>. Such a report may include a recommendation that, with a view to remedying the failings in question, the regulator take special measures in relation to the NHS foundation trust in question<sup>26</sup>.

Any report under these provisions must give the Commission's reasons for its view and for any recommendation made<sup>27</sup>. The Secretary of State may, after consulting the Commission, by regulations<sup>28</sup> make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of any such report<sup>29</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552. The Secretary of State may make regulations requiring the Commission to devise and publish criteria for use in the exercise of its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 53; see s 59; and PARA 574. As to functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see s 132; and PARA 587. As to the Secretary of State see PARA 6 note 8. As to the duty of the Commission to have regard to government policy in the exercise of its functions see s 130; and PARA 586.

2 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 50; see PARA 564.

3 lie under the Health and Social Care (Community Health and Standards) Act 2003 s 51: see PARA 565.

4 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

5 Health and Social Care (Community Health and Standards) Act 2003 s 53(1)(a). As to the meaning of 'NHS body' see PARA 548 note 1.

6 lie under the Health and Social Care (Community Health and Standards) Act 2003 s 52: see PARA 566.

7 As to the meaning of 'English NHS body' see PARA 548 note 1.

8 Health and Social Care (Community Health and Standards) Act 2003 s 53(1)(b). As to the meaning of 'cross-border SHA' see PARA 548 note 1.

9 Health and Social Care (Community Health and Standards) Act 2003 s 53(2)(a). The Commission must make copies of any report under s 53 available for inspection at its offices: see PARA 577.

10 Health and Social Care (Community Health and Standards) Act 2003 s 53(2)(b).

11 Health and Social Care (Community Health and Standards) Act 2003 s 53(2)(c).

12 Health and Social Care (Community Health and Standards) Act 2003 s 53(3)(a).

13 As to the meaning of 'person' see PARA 17 note 2.

14 As to the meaning of 'Welsh NHS body' see PARA 548 note 1.

15 Health and Social Care (Community Health and Standards) Act 2003 s 53(3)(b).

16 As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

17 Health and Social Care (Community Health and Standards) Act 2003 s 53(4)(a).

18 Health and Social Care (Community Health and Standards) Act 2003 s 53(4)(b).

19 Health and Social Care (Community Health and Standards) Act 2003 s 53(4)(c).

20 Health and Social Care (Community Health and Standards) Act 2003 s 53(5)(a).

- 21 Health and Social Care (Community Health and Standards) Act 2003 s 53(5)(b).
- 22 As to the Independent Regulator of NHS Foundation Trusts see PARA 188.
- 23 Health and Social Care (Community Health and Standards) Act 2003 s 53(6)(a). As to NHS foundation trusts see PARA 174.
- 24 Health and Social Care (Community Health and Standards) Act 2003 s 53(6)(b).
- 25 Health and Social Care (Community Health and Standards) Act 2003 s 53(6)(c).
- 26 Health and Social Care (Community Health and Standards) Act 2003 s 53(7).
- 27 Health and Social Care (Community Health and Standards) Act 2003 s 53(8).
- 28 As to the making of regulations see PARA 551. At the date at which this volume states the law no such regulations had been made.
- 29 Health and Social Care (Community Health and Standards) Act 2003 s 53(9).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **564-570 Annual reviews ... Action following service of improvement notices**

Health and Social Care (Community Health and Standards) Act 2003 ss 50-53B repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. SI 2004/557 revoked: SI 2009/462. Periodic reviews must now be conducted by the Care Quality Commission: see the Health and Social Care Act 2008 s 46 et seq; and PARA 564A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(ii) The Commission for Healthcare Audit and Inspection/B. FUNCTIONS/569. Code of practice: improvement notices.

### **569. Code of practice: improvement notices.**

Where, following an annual review<sup>1</sup>, a review of the provision of health care<sup>2</sup> by or for NHS bodies<sup>3</sup>, or a review or investigation of health care provision by or for English NHS bodies or cross-border SHAs<sup>4</sup>, the Commission for Healthcare Audit and Inspection<sup>5</sup>: (1) is of the view that any provisions of a code of practice relating to the prevention and control of health care associated infections<sup>6</sup> and applying to an English NHS body or a cross-border SHA are not being observed in any material respect in relation to the provision of health care by or for the body<sup>7</sup>; but (2) having regard to all the circumstances, is not of the view that it is required to make a report<sup>8</sup> to the Secretary of State<sup>9</sup>, the Commission may serve an improvement notice on the body in respect of the failure to observe the code, if it considers that serving the notice is the most appropriate course of action for it to take with a view to securing that the failure is remedied<sup>10</sup>.

An improvement notice must: (a) state that the Commission has formed the view that the provisions of the code of practice are not being observed<sup>11</sup> in relation to the provision of health care by or for the body, giving particulars of the material respect in which the Commission considers that the provisions of the code are not being observed<sup>12</sup>; (b) state the Commission's reasons for its view<sup>13</sup>; and (c) require the body to remedy the failure to observe the code, and to do so within such period as is specified in the notice<sup>14</sup>. An improvement notice may (but need not) include a recommendation by the Commission as to the way in which the failure should be remedied<sup>15</sup>. An improvement notice may relate to more than one failure to observe the code<sup>16</sup>.

Where the Commission serves an improvement notice on a body, the Commission must notify the Secretary of State<sup>17</sup>, the Independent Regulator of NHS Foundation Trusts<sup>18</sup> if the body is an NHS foundation trust<sup>19</sup>, and any relevant strategic health authority<sup>20</sup> if the body is a primary care trust or an NHS trust<sup>21</sup>.

1    Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 50: see PARA 564.

2    As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

3    Ie a review under the Health and Social Care (Community Health and Standards) Act 2003 s 51: see PARA 565. As to the meaning of 'NHS body' see PARA 548 note 1.

4    Ie a review or investigation under the Health and Social Care (Community Health and Standards) Act 2003 s 52: see PARA 566. As to the meanings of 'English NHS body' and 'cross-border SHA' see PARA 548 note 1.

5    As to the Commission for Healthcare Audit and Inspection see PARA 552. As to the Commission's functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the duty of the Commission to have regard to government policy in the exercise of its functions see s 130; and PARA 586.



6 Is a code of practice issued under the Health and Social Care (Community Health and Standards) Act 2003 s 47A: see PARA 550.

7 Health and Social Care (Community Health and Standards) Act 2003 s 53A(1)(a) (s 53A added by the Health Act 2006 s 16).

8 Is a report under the Health and Social Care (Community Health and Standards) Act 2003 s 53(2) or, if relevant, s 53(6): see PARA 568.

9 Health and Social Care (Community Health and Standards) Act 2003 s 53A(1)(b) (as added: see note 7). As to the Secretary of State see PARA 6 note 8.

10 Health and Social Care (Community Health and Standards) Act 2003 s 53A(2) (as added: see note 7). Where: (1) an improvement notice is served on a body in respect of a particular failure to observe a code of practice (s 53A(8)(a) (as so added)); and (2) a review under s 52(3)(b) (see PARA 566) is conducted by the Commission in pursuance of s 53B(4)(a) (see PARA 570) with a view to assessing the body's compliance with the notice (s 53A(8)(b) (as so added)), s 53A(1) (see the text to notes 1-9) does not apply in relation to that review so as to enable the Commission to serve a further improvement notice on that body in respect of that failure (s 53A(9)(a) (as so added)), but does apply in relation to that review so as to enable the Commission (if the conditions in s 53A(1) and (2) are satisfied) to serve an improvement notice on that body in respect of a different failure to observe the code (s 53A(9)(b) (as so added)). As to action following the service of an improvement notice see PARA 570.

11 Is the view mentioned in the Health and Social Care (Community Health and Standards) Act 2003 s 53A(1) (a): see the text to note 7.

12 Health and Social Care (Community Health and Standards) Act 2003 s 53A(3)(a) (as added: see note 7).

13 Health and Social Care (Community Health and Standards) Act 2003 s 53A(3)(b) (as added: see note 7).

14 Health and Social Care (Community Health and Standards) Act 2003 s 53A(3)(c) (as added: see note 7).

15 Health and Social Care (Community Health and Standards) Act 2003 s 53A(4) (as added: see note 7).

16 Health and Social Care (Community Health and Standards) Act 2003 s 53A(5) (as added: see note 7). In such a case s 53B(2)-(4) (see PARA 570) applies separately in relation to each such failure, but any report required by s 53B may relate to more than one such failure: s 53A(5)(a), (b) (as so added).

17 Health and Social Care (Community Health and Standards) Act 2003 s 53A(6) (as added: see note 7).

18 As to the Independent Regulator of NHS Foundation Trusts see PARA 188.

19 Health and Social Care (Community Health and Standards) Act 2003 s 53A(6)(a) (as added: see note 7). As to NHS foundation trusts see PARA 174.

20 'Relevant strategic health authority' means: (1) in relation to a primary care trust, any strategic health authority whose area includes any part of the trust's area (Health and Social Care (Community Health and Standards) Act 2003 s 53A(7)(a) (as added: see note 7)); (2) in relation to an NHS trust (other than one responsible for providing ambulance services), the strategic health authority in whose area all or most of the trust's hospitals, establishments or facilities are situated (s 53A(7)(b) (as so added)); (3) in relation to an NHS trust responsible for providing ambulance services, the strategic health authority in whose area the headquarters establishment responsible for the control of those services is situated (s 53A(7)(c) (as so added)). As to primary care trusts see PARA 111. As to strategic health authorities see PARA 94 et seq. As to NHS trusts see PARA 155.

21 Health and Social Care (Community Health and Standards) Act 2003 s 53A(6)(b) (as added: see note 7).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **564-570 Annual reviews ... Action following service of improvement notices**

Health and Social Care (Community Health and Standards) Act 2003 ss 50-53B repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. SI 2004/557 revoked: SI 2009/462. Periodic reviews must now be conducted by the Care Quality Commission: see the Health and Social Care Act 2008 s 46 et seq; and PARA 564A.

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### **570. Action following service of improvement notices.**

The following provisions apply where the Commission for Healthcare Audit and Inspection<sup>1</sup> has served an improvement notice<sup>2</sup> on a body<sup>3</sup>.

If, before the end of the specified period<sup>4</sup>, the body requests the Commission to extend that period<sup>5</sup>, and the Commission considers that there are exceptional circumstances which justify its extending that period by a further period of time<sup>6</sup>, the Commission may, by a notice served on the body, extend the specified period by that further period<sup>7</sup>.

Where the specified period has ended or the body notifies the Commission before the end of that period that it has complied with the improvement notice, the Commission must conduct a review<sup>8</sup> with a view to assessing the body's compliance with the notice<sup>9</sup>, and then make a report<sup>10</sup>. If the Commission remains of the view that the relevant provisions of the code<sup>11</sup> are not being observed in any material respect in relation to the provision of health care<sup>12</sup> by or for the body<sup>13</sup>, and having regard to all the circumstances is of the view that it is required to make a report<sup>14</sup> as to failings by the body<sup>15</sup>, the Commission must accordingly make such a report<sup>16</sup>. If the Commission does not make any such report, it must instead make a report to the Secretary of State<sup>17</sup>, and if the body is an NHS foundation trust<sup>18</sup> to the Independent Regulator of NHS Foundation Trusts<sup>19</sup>, setting out the prescribed matters<sup>20</sup>. The Commission must send a copy of any report made by it<sup>21</sup> in relation to a primary care trust<sup>22</sup> or an NHS trust<sup>23</sup> to the relevant strategic health authority<sup>24</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552. As to the Commission's functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the duty of the Commission to have regard to government policy in the exercise of its functions see PARA 586.

2 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 53A: see PARA 569.

3 Health and Social Care (Community Health and Standards) Act 2003 s 53B(1) (s 53B added by the Health Act 2006 s 16).

4 'Specified period' means the period specified under the Health and Social Care (Community Health and Standards) Act 2003 s 53A(3)(c) (see PARA 569) (s 53B(3)(a) (as added: see note 3)), or if that period has been extended under s 53B(2), that period as so extended (s 53B(3)(b) (as so added)).

5 Health and Social Care (Community Health and Standards) Act 2003 s 53B(2)(a) (as added: see note 3).

6 Health and Social Care (Community Health and Standards) Act 2003 s 53B(2)(b) (as added: see note 3).

7 Health and Social Care (Community Health and Standards) Act 2003 s 53B(2) (as added: see note 3).

8    le under the Health and Social Care (Community Health and Standards) Act 2003 s 52(3)(b): see PARA 566.

9    Health and Social Care (Community Health and Standards) Act 2003 s 53B(4)(a) (as added: see note 3).

10   See the Health and Social Care (Community Health and Standards) Act 2003 s 53B(4)(b) (as added: see note 3). The report referred to is one under s 53B(5) or (6): see the text to notes 11-20. The making of any report in accordance with s 53B(5) or (6) is to be taken as satisfying the requirement to publish a report under s 52(7) (see PARA 566) in respect of the review: s 53B(4) (as so added). The Commission must make copies of any such report available for inspection at its offices: see PARA 577.

11   'Relevant provisions of the code' means the provisions of the code in relation to which the Commission formed the view mentioned in the Health and Social Care (Community Health and Standards) Act 2003 s 53A(1) (a) (see PARA 569): s 53B(10) (as added: see note 3).

12   As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

13   Health and Social Care (Community Health and Standards) Act 2003 s 53B(5)(a) (as added: see note 3).

14   le under the Health and Social Care (Community Health and Standards) Act 2003 s 53(2) and, if relevant, s 53(6): see PARA 568.

15   Health and Social Care (Community Health and Standards) Act 2003 s 53B(5)(b) (as added: see note 3).

16   See the Health and Social Care (Community Health and Standards) Act 2003 s 53B(5) (as added: see note 3).

17   Health and Social Care (Community Health and Standards) Act 2003 s 53B(6)(a) (as added: see note 3). As to the Secretary of State see PARA 6 note 8.

18   As to NHS foundation trusts see PARA 174.

19   Health and Social Care (Community Health and Standards) Act 2003 s 53B(6)(b) (as added: see note 3). As to the Independent Regulator of NHS Foundation Trusts see PARA 188.

20   See the Health and Social Care (Community Health and Standards) Act 2003 s 53B(6) (as added: see note 3). If the Commission is of the view that the relevant provisions of the code are being observed in relation to the provision of health care by or for the body, the matters are that the Commission is of that view (s 53B(7)(a) (as so added)), and its reasons for that view (s 53B(7)(b) (as so added)). If the Commission is of the view that the relevant provisions of the code are not being so observed in any respect (material or otherwise), the matters are: (1) that the Commission is of that view (s 53B(8)(a) (as so added)); (2) its reasons for that view (s 53B(8)(b) (as so added)); (3) if its view is that those provisions are not being observed in any material respect, its reasons for not forming the view mentioned in s 53B(5)(b) (see the text to notes 14-15) (s 53B(8)(c) (as so added)); and (4) (whether or not head (3) above applies) any action which it proposes to take in relation to the body in connection with the failure to observe the code (s 53B(8)(d) (as so added)).

21 le in accordance with the Health and Social Care (Community Health and Standards) Act 2003 s 53B(5) or (6); see the text to notes 11-20.

22 As to primary care trusts see PARA 111.

23 As to NHS trusts see PARA 155.

24 Health and Social Care (Community Health and Standards) Act 2003 s 53B(9) (as added: see note 3). As to the meaning of 'relevant strategic health authority' see PARA 569 note 20.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **564-570 Annual reviews ... Action following service of improvement notices**

Health and Social Care (Community Health and Standards) Act 2003 ss 50-53B repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. SI 2004/557 revoked: SI 2009/462. Periodic reviews must now be conducted by the Care Quality Commission: see the Health and Social Care Act 2008 s 46 et seq; and PARA 564A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(ii) The Commission for Healthcare Audit and Inspection/B. FUNCTIONS/571. Functions relating to Secretary of State and Welsh Ministers.

### **571. Functions relating to Secretary of State and Welsh Ministers.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> is to keep the appropriate authority<sup>2</sup> informed about the provision of health care by and for any NHS body<sup>3</sup>. The Commission may at any time give advice to the appropriate authority on any matter connected with the provision of such health care; including, in particular, advice on any changes which it thinks should be made to the standards in relation to the provision of health care set by that authority<sup>4</sup>, or any code of practice relating to the prevention and control of health care associated infections<sup>5</sup>, for the purpose of securing improvement in the quality of the health care<sup>6</sup>. When requested to do so by the appropriate authority, the Commission must give the authority advice or information on such matters connected with the provision of health care by or for any NHS body as may be specified in the request<sup>7</sup>. The Commission may give advice to the appropriate authority or any NHS body about the establishment or conduct of any inquiry held, or to be held, by the authority or the body in relation to the provision of health care by or for that body<sup>8</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552. As to the Commission's functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see the Health and Social Care (Community Health and Standards) Act 2003 s 132; and PARA 587. As to the Secretary of State see PARA 6 note 8. As to the duty of the Commission to have regard to government policy in the exercise of its functions see s 130; and PARA 586.

2 'Appropriate authority' means the Secretary of State, in relation to the provision of health care by or for an English NHS body or cross-border SHA (Health and Social Care (Community Health and Standards) Act 2003 s 54(5)(a)); or the Welsh Ministers, in relation to the provision of health care by or for a Welsh NHS body (s 54(5)(b); Government of Wales Act 2006 Sch 11 para 32). As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3. As to the meanings of 'English NHS body', 'cross-border SHA' and 'Welsh NHS body' see PARA 548 note 1. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

3 Health and Social Care (Community Health and Standards) Act 2003 s 54(1). As to the meaning of 'NHS body' see PARA 548 note 1.

4 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 46 or s 47: see PARA 549.

5 Ie a code of practice issued under the Health and Social Care (Community Health and Standards) Act 2003 s 47A: see PARA 550.

6 Health and Social Care (Community Health and Standards) Act 2003 s 54(2) (amended by the Health Act 2006 s 15(1), (6)).

7 Health and Social Care (Community Health and Standards) Act 2003 s 54(3).

8 Health and Social Care (Community Health and Standards) Act 2003 s 54(4).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **571 Functions relating to Secretary of State and Welsh Ministers**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 54 repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. As to the duty of the Care Quality Commission to keep the Secretary of State informed about the provision of NHS health care in general, see now the Health and Social Care Act 2008 s 53.

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## **572. Co-ordination of reviews.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> has the function<sup>2</sup> of promoting the effective co-ordination of reviews or assessments carried out by public bodies or other persons<sup>3</sup> in relation to the provision of health care<sup>4</sup> by or for English NHS bodies and cross-border SHAs<sup>5</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 The Secretary of State may make regulations requiring the Commission to devise and publish criteria for use in the exercise of its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 56: see s 59; and PARA 574. As to functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see s 132; and PARA 587. As to the duty of the Commission to have regard to government policy in the exercise of its functions see s 130; and PARA 586. As to the Secretary of State see PARA 6 note 8.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

5 Health and Social Care (Community Health and Standards) Act 2003 s 56. As to the meanings of 'English NHS body' and 'cross-border SHA' see PARA 548 note 1.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

## **572 Co-ordination of reviews**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 56 repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. As to the



duty of the Care Quality Commission to co-ordinate reviews, see the Health and Social Care Act 2008 s 67.

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### **573. Studies as to economy, efficiency and effectiveness.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> has the function<sup>2</sup> of promoting or undertaking comparative or other studies designed to enable it to make recommendations for improving economy, efficiency and effectiveness in the exercise of any of the functions of an English NHS body<sup>3</sup>, other than a special health authority<sup>4</sup>, whether the functions are exercised by the English NHS body or by another person<sup>5</sup>. The Commission may exercise this function in relation to a body on the Commission's own initiative or at the request of the body concerned<sup>6</sup>. For the purposes of this function the Commission may carry out an inspection of any English NHS body other than a special health authority<sup>7</sup>, and any person exercising the functions of such a body<sup>8</sup>.

The Commission must publish its recommendations and the result of any studies<sup>9</sup>. The Secretary of State may, after consulting the Commission, by regulations<sup>10</sup> make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of any recommendations or the result of any studies<sup>11</sup>.

This function of the Commission may be exercised on its behalf by the Audit Commission, if the Audit Commission and the Commission so agree<sup>12</sup>. Where the Audit Commission exercises such functions, it must do so on such terms, including terms as to payment, as the Commission and the Audit Commission may agree<sup>13</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 The Secretary of State may make regulations requiring the Commission to devise and publish criteria for use in the exercise of its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 57: see s 59; and PARA 574. As to functions in general see PARA 561. As to the discharge of functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see s 132; and PARA 587. As to the duty of the Commission to have regard to government policy in the exercise of its functions see s 130; and PARA 586. As to the Secretary of State see PARA 6 note 8.

3 As to the meaning of 'English NHS body' see PARA 548 note 1.

4 As to special health authorities see PARA 136.

5 Health and Social Care (Community Health and Standards) Act 2003 s 57(1). As to the meaning of 'person' see PARA 17 note 2.

6 Health and Social Care (Community Health and Standards) Act 2003 s 57(2).

7 Health and Social Care (Community Health and Standards) Act 2003 s 57(3)(a).

8 Health and Social Care (Community Health and Standards) Act 2003 s 57(3)(b).

9 Health and Social Care (Community Health and Standards) Act 2003 s 57(4).

10 As to the making of regulations see PARA 551. At the date at which this volume states the law no such regulations had been made.

11 Health and Social Care (Community Health and Standards) Act 2003 s 57(5).

12 Health and Social Care (Community Health and Standards) Act 2003 s 57(6). 'Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England: s 148 (definition amended by the Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)). As to the Audit Commission see **LOCAL GOVERNMENT** vol 69 (2009) PARA 744 et seq.

13 Health and Social Care (Community Health and Standards) Act 2003 s 57(7).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **573 Studies as to economy, efficiency and effectiveness**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 57 repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. See now the Health and Social Care Act 2008 s 54 (studies by the Care Quality Commission as to economy, efficiency etc), s 55 (publication of results of studies), and s 56 (role of Audit Commission). As to the duty of the Commission to publish a document setting out the studies that it proposes to conduct under s 54, see s 81.

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#### **574. Criteria for the exercise of functions.**

The Secretary of State<sup>1</sup> may, after consulting the Commission for Healthcare Audit and Inspection<sup>2</sup>, make regulations<sup>3</sup> requiring the Commission to devise and publish statements of criteria to be used in: (1) the exercise of any of its functions<sup>4</sup> in relation to the provision of health care<sup>5</sup> by or for an English NHS body or cross-border SHA<sup>6</sup>; (2) the exercise of any of its functions in respect of reviews and investigations of such bodies<sup>7</sup>, the co-ordination of reviews<sup>8</sup>, or studies as to economy, efficiency and effectiveness<sup>9</sup>.

The Welsh Ministers<sup>10</sup> may, after consulting the Commission, make regulations requiring the Commission to devise and publish statements of criteria to be used in the exercise of its functions<sup>11</sup> in relation to the provision of health care by or for a Welsh NHS body<sup>12</sup>.

Regulations under these provisions may require the Commission: (a) to consult any person<sup>13</sup> specified in the regulations before publishing<sup>14</sup> a statement of criteria<sup>15</sup>; (b) to obtain the consent of the Secretary of State or, as the case may be, the Welsh Ministers before publishing such a statement<sup>16</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 As to the making of regulations see PARA 551. At the date at which this volume states the law no such regulations had been made.

4 I.e. its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 48(1) (see PARA 561), s 49 (see PARA 563), s 51 (see PARA 565) or s 53 (see PARA 568).

5 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

6 Health and Social Care (Community Health and Standards) Act 2003 s 59(1)(a). As to the meanings of 'English NHS body' and 'cross-border SHA' see PARA 548 note 1.

7 I.e. its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 52: see PARA 566.

8 I.e. its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 56: see PARA 572.

9 Health and Social Care (Community Health and Standards) Act 2003 s 59(1)(b). The functions as to such studies are those under s 57 (see PARA 573) or s 58(1)(b) (see PARA 561). In relation to any function conferred on the Commission under s 58(1)(a) (see PARA 561), regulations under s 58 may provide that any one or more of s 59(1)(a), (b) or (2) have effect as if it included a reference to the exercise of that function: see s 59(3).

10 This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

11 I.e. its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 48(1) (see PARA 561), s 49 (see PARA 563), s 51 (see PARA 565) or s 53 (see PARA 568).

12 Health and Social Care (Community Health and Standards) Act 2003 s 59(2); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh NHS body' see PARA 548 note 1. At the date at which this volume states the law no such regulations had been made.

13 As to the meaning of 'person' see PARA 17 note 2.

14 I.e. under the Health and Social Care (Community Health and Standards) Act 2003 s 59(1) or (2): see the text to notes 1-12.

15 Health and Social Care (Community Health and Standards) Act 2003 s 59(4)(a).

16 See the Health and Social Care (Community Health and Standards) Act 2003 s 59(4)(b), (c); Government of Wales Act 2006 Sch 11 para 32.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **574 Criteria for the exercise of functions**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 59 repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1.

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## **575. Provision of material.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> must, on request, provide:

- 383 (1) the Comptroller and Auditor General<sup>2</sup> with any material relevant to a review or investigation<sup>3</sup> or a study<sup>4</sup>;
- 384 (2) the Auditor General for Wales<sup>5</sup> with all material which is relevant to a review<sup>6</sup> and to one or more Welsh NHS bodies<sup>7</sup>;
- 385 (3) the Independent Regulator of NHS Foundation Trusts<sup>8</sup> with any material which is relevant to a review or investigation<sup>9</sup> and relates to the provision of health care<sup>10</sup> by or for an NHS foundation trust<sup>11</sup>; and any material which is relevant to a study<sup>12</sup> and relates to an NHS foundation trust<sup>13</sup>.

The Auditor General for Wales must, on request, provide the Commission with any information it may reasonably require for the purpose of making comparisons, in the exercise of its functions<sup>14</sup>, between English NHS bodies<sup>15</sup> and Welsh NHS bodies<sup>16</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

3 Ie a review or investigation under the Health and Social Care (Community Health and Standards) Act 2003 ss 50-52: see PARAS 564-566.

4 Health and Social Care (Community Health and Standards) Act 2003 s 60(1). The study referred to is one under s 57: see PARA 573.

5 As to the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 51: see PARA 565.

7 Health and Social Care (Community Health and Standards) Act 2003 s 60(1A) (added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 57, 58). As to the meaning of 'Welsh NHS body' see PARA 548 note 1.

8 As to the Independent Regulator of NHS Foundation Trusts see PARA 188.

9 Ie a review or investigation under the Health and Social Care (Community Health and Standards) Act 2003 ss 50-52: see PARAS 564-566.

- 10 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.
- 11 Health and Social Care (Community Health and Standards) Act 2003 s 60(2)(a). As to NHS foundation trusts see PARA 174.
- 12 le a study under the Health and Social Care (Community Health and Standards) Act 2003 s 57: see PARA 573.
- 13 Health and Social Care (Community Health and Standards) Act 2003 s 60(2)(b).
- 14 le its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 51 (see PARA 565), s 52 (see PARA 566) and s 57 (see PARA 573).
- 15 As to the meaning of 'English NHS body' see PARA 548 note 1.
- 16 Health and Social Care (Community Health and Standards) Act 2003 s 69A (added by the Public Audit (Wales) Act 2004 Sch 2 paras 57, 59).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **575 Provision of material**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 60 repealed, s 69A repealed as from a day to be appointed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1.

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## **576. Fees.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Commission for Healthcare Audit and Inspection<sup>2</sup> may from time to time make and publish provision<sup>3</sup>:

- 386 (1) requiring an English NHS body<sup>4</sup> or cross-border SHA<sup>5</sup> to pay a fee in respect of the exercise by the Commission, in relation to that body or to health care provided<sup>6</sup> by or for that body, of such of its functions<sup>7</sup> as may be prescribed<sup>8</sup>;
- 387 (2) requiring a person of a prescribed description who provides health care for an English NHS body or cross-border SHA to pay a fee in respect of the exercise by the Commission, in relation to the health care so provided by that person, of such of those functions as may be prescribed<sup>9</sup>;
- 388 (3) requiring a Welsh NHS body to pay a fee in respect of the exercise by the Commission, in relation to that body or to health care provided by or for that body, of such of those functions as may be prescribed<sup>10</sup>;
- 389 (4) requiring a person of a prescribed description who provides health care for a Welsh NHS body to pay a fee in respect of the exercise by the Commission, in relation to the health care so provided by that person, of such of those functions as may be prescribed<sup>11</sup>.

The amount of a fee payable under such provision is such as may be specified in, or calculated or determined under, the provision<sup>12</sup>. The Secretary of State, in relation to heads (1) and (2) above, or the Welsh Ministers, in relation to heads (3) and (4) above, may by regulations make provision: (a) as to the manner in which the provision to be made by the Commission is to be made and published<sup>13</sup>, and the matters to be taken into account by the Commission before making the provision<sup>14</sup>; (b) for an independent person or panel to review the amount charged in any particular case and, if that person or panel thinks fit, to substitute a lesser amount for that amount<sup>15</sup>.

A fee payable by virtue of these provisions may, without prejudice to any other method of recovery, be recovered summarily as a civil debt<sup>16</sup>.

1 The Health and Social Care (Community Health and Standards) Act 2003 ss 62, 63 are in force only in so far as they relate to the power to make regulations: see s 199(4). For remaining purposes they are to come into force on such day as may by order be appointed: see s 199(1)-(3). At the date at which this volume states the law no such order had been made.

2 As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 Before making any such provision the Commission must consult such persons as appear to it appropriate: Health and Social Care (Community Health and Standards) Act 2003 ss 62(5), 63(5). Such provision may include provision: (1) for different fees to be paid in different cases, or classes of case (ss 62(4)(a), 63(4)(a)); (2) for different fees to be paid by persons of different descriptions (ss 62(4)(b), 63(4)(b)); (3) for the amount of a fee



to be determined by the Commission in accordance with specified factors (ss 62(4)(c), 63(4)(c)); (4) for the time by which a fee must be paid (ss 62(4)(d), 63(4)(d)). As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'English NHS body' see PARA 548 note 1.

5 As to the meaning of 'cross-border SHA' see PARA 548 note 1.

6 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

7 Its functions under the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 3 (ss 48-69): see PARA 561.

8 Health and Social Care (Community Health and Standards) Act 2003 s 62(1)(a). 'Prescribed' in s 62 means prescribed by regulations made by the Secretary of State: s 148. As to the making of regulations see PARA 551. As to the Secretary of State see PARA 6 note 8. At the date at which this volume states the law no such regulations had been made.

9 Health and Social Care (Community Health and Standards) Act 2003 s 62(1)(b). At the date at which this volume states the law no such regulations had been made. The Commission may not under s 62(1)(b) require a Welsh NHS body to pay a fee: s 62(2). As to the meaning of 'Welsh NHS body' see PARA 548 note 1.

10 Health and Social Care (Community Health and Standards) Act 2003 s 63(1)(a). 'Prescribed' in s 63 means prescribed by regulations made by the Welsh Ministers: s 148; Government of Wales Act 2006 Sch 11 para 32. The functions to make regulations under ss 63, 148 were originally vested in the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6. At the date at which this volume states the law no such regulations had been made.

11 Health and Social Care (Community Health and Standards) Act 2003 s 63(1)(b). At the date at which this volume states the law no such regulations had been made. The Commission may not under s 63(1)(b) require an English NHS body or cross-border SHA to pay a fee: s 63(2).

12 Health and Social Care (Community Health and Standards) Act 2003 ss 62(3), 63(3). For the purpose of determining the fee payable by a person or body, the person or body must provide the Commission with such information, in such form, as the Commission may require: ss 62(8), 63(8).

13 Health and Social Care (Community Health and Standards) Act 2003 ss 62(6)(a), 63(6)(a).

14 Health and Social Care (Community Health and Standards) Act 2003 ss 62(6)(b), 63(6)(b). At the date at which this volume states the law no such regulations had been made.

15 Health and Social Care (Community Health and Standards) Act 2003 ss 62(7), 63(7). At the date at which this volume states the law no such regulations had been made.

16 Health and Social Care (Community Health and Standards) Act 2003 ss 62(9), 63(9). As to the summary recovery of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

**UPDATE****552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

**576 Fees**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 ss 62, 63 repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. See now the Health and Social Care Act 2008 s 85.

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### **577. Availability of reports and information.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> must make copies of any report published by it<sup>2</sup> available for inspection at its offices by any person<sup>3</sup> at any reasonable time<sup>4</sup>. Any person who requests a copy of such a report is entitled to have one on payment of such reasonable fee (if any) as the Commission considers appropriate<sup>5</sup>. The Commission may charge a person such reasonable fee as it considers appropriate where it provides him, at his request, with any other information relevant to the discharge of its functions<sup>6</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 Ie under the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 3 (ss 48-69).

3 As to the meaning of 'person' see PARA 17 note 2.

4 Health and Social Care (Community Health and Standards) Act 2003 s 64(1).

5 Health and Social Care (Community Health and Standards) Act 2003 s 64(2).

6 Health and Social Care (Community Health and Standards) Act 2003 s 64(3).

### **UPDATE**

#### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **577 Availability of reports and information**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 64 repealed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. As to the duty of the Care Quality Commission to make reports and information available for inspection, see the Health and Social Care Act 2008 s 84.

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### **578. Rights of entry and inspection.**

A person<sup>1</sup> authorised to do so by the Commission for Healthcare Audit and Inspection<sup>2</sup> may, if the Commission considers it necessary or expedient for the purposes of its functions relating to health care<sup>3</sup>, at any reasonable time enter and inspect<sup>4</sup>: (1) any premises owned or controlled by an NHS body<sup>5</sup>; (2) any other premises used, or proposed to be used, for any purpose connected with the provision of health care by or for an NHS body<sup>6</sup>, or the discharge of any of the functions of an NHS body<sup>7</sup>.

A person so authorised to enter and inspect premises may, if he considers it necessary or expedient: (a) inspect, take copies of and remove from the premises any documents or records (including personal records)<sup>8</sup>; (b) inspect any other item and remove it from the premises<sup>9</sup>; (c) interview in private any person working at the premises<sup>10</sup>, and any person receiving health care there who consents to be interviewed<sup>11</sup>; and (d) make any other examination into the state and management of the premises and treatment of persons receiving health care there<sup>12</sup>. A person so authorised may also: (i) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers of entry and inspection<sup>13</sup>; and (ii) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers<sup>14</sup>.

Any person who without reasonable excuse obstructs the exercise of any power conferred by these provisions<sup>15</sup>, or fails to comply with any requirement of these provisions<sup>16</sup>, is guilty of an offence<sup>17</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 Ie for the purposes of the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 3 (ss 48-69). As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

4 A person who proposes to exercise any power of entry or inspection conferred by the Health and Social Care (Community Health and Standards) Act 2003 s 66 must if so required produce some duly authenticated document showing his authority to exercise the power: s 66(2). As to the power to require documents and information see PARA 579. As to the power to require an explanation of documents and other information see PARA 580.

5 Health and Social Care (Community Health and Standards) Act 2003 s 66(1)(a). As to the meaning of 'NHS body' see PARA 548 note 1.

6 Health and Social Care (Community Health and Standards) Act 2003 s 66(1)(b)(i).

7 Health and Social Care (Community Health and Standards) Act 2003 s 66(1)(b)(ii).

8 Health and Social Care (Community Health and Standards) Act 2003 s 67(1)(a). This power includes: (1) power to require any person holding or accountable for documents or records kept on the premises to produce them (s 67(2)(a)); and (2) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away (s 67(2)(b)). A person authorised by virtue of s 67(1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question: s 67(3). As to the use by the Commission of information obtained by it or documents and records produced to it see PARA 590.

9 Health and Social Care (Community Health and Standards) Act 2003 s 67(1)(b).

10 Health and Social Care (Community Health and Standards) Act 2003 s 67(1)(c)(i).

11 Health and Social Care (Community Health and Standards) Act 2003 s 67(1)(c)(ii).

12 Health and Social Care (Community Health and Standards) Act 2003 s 67(1)(d).

13 Health and Social Care (Community Health and Standards) Act 2003 s 67(4)(a).

14 Health and Social Care (Community Health and Standards) Act 2003 s 67(4)(b).

15 Health and Social Care (Community Health and Standards) Act 2003 s 67(5)(a).

16 Health and Social Care (Community Health and Standards) Act 2003 s 67(5)(b).

17 Health and Social Care (Community Health and Standards) Act 2003 s 67(5). The penalty for such an offence is, on summary conviction, a fine not exceeding level 4 on the standard scale: s 67(5). As to the standard scale see PARA 28 note 12. As to the commission of offences by bodies corporate see PARA 592.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **578 Rights of entry and inspection**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 ss 66, 67 repealed as from a day to be appointed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. As to the rights of entry and inspection of persons authorised by the Care Quality Commission, see the Health and Social Care Act 2008 ss 60-63.

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### **579. Power to require documents and information.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> may at any time require any specified person<sup>2</sup> to provide it with any information, documents, records (including personal records<sup>3</sup>) or other items which relate to the provision of health care<sup>4</sup> by or for an NHS body<sup>5</sup>, or the discharge of any of the functions of an NHS body<sup>6</sup>, and which the Commission considers it necessary or expedient to have for the purposes<sup>7</sup> of its functions relating to health care<sup>8</sup>. The specified persons for these purposes are: (1) the NHS body<sup>9</sup>; (2) any person providing health care for, or exercising functions of, the NHS body<sup>10</sup>; (3) a local authority<sup>11</sup>.

Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of these provisions is guilty of an offence<sup>12</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to the meaning of 'person' see PARA 17 note 2.

3 The power to require the provision of records includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form: Health and Social Care (Community Health and Standards) Act 2003 s 68(3).

4 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

5 Health and Social Care (Community Health and Standards) Act 2003 s 68(1)(a)(i). As to the meaning of 'NHS body' see PARA 548 note 1.

6 Health and Social Care (Community Health and Standards) Act 2003 s 68(1)(a)(ii).

7 As to the purposes of the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 3 (ss 48-69).

8 Health and Social Care (Community Health and Standards) Act 2003 s 68(1)(b). As to powers of entry and inspection see PARA 578. As to the power to require an explanation of documents and other information see PARA 580. As to the use by the Commission of information obtained by it or documents and records produced to it see PARA 590.

9 Health and Social Care (Community Health and Standards) Act 2003 s 68(2)(a).

10 Health and Social Care (Community Health and Standards) Act 2003 s 68(2)(b).



11 Health and Social Care (Community Health and Standards) Act 2003 s 68(2)(c). 'Local authority' means the councils of non-metropolitan counties, metropolitan districts and London boroughs and the Common Council of the City of London; and, in relation to Wales, the councils of counties and county boroughs: see the Local Authority Social Services Act 1970 s 1 (amended by the Local Government Act 1972 s 195(1), (3); the Local Government (Wales) Act 1994 s 22(4), Sch 10 para 7); definition applied by the Health and Social Care (Community Health and Standards) Act 2003 s 148. As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 51-55.

12 Health and Social Care (Community Health and Standards) Act 2003 s 68(4). The penalty for such an offence is, on summary conviction, a fine not exceeding level 4 on the standard scale: see s 68(4). As to the standard scale see PARA 28 note 12. As to the commission of offences by bodies corporate see PARA 592.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **579 Power to require documents and information**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 68 repealed as from a day to be appointed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. As to the power of the Care Quality Commission to require documents and information, see the Health and Social Care Act 2008 s 64.

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### **580. Power to require explanation.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision requiring prescribed persons<sup>3</sup> to provide to the Commission for Healthcare Audit and Inspection<sup>4</sup>, or to persons authorised by it, an explanation of: (1) any documents, records or items inspected, copied or provided<sup>5</sup> to it<sup>6</sup>; (2) any information provided<sup>7</sup> to it<sup>8</sup>; or (3) any matters which are the subject of the exercise of any functions<sup>9</sup> of the Commission<sup>10</sup>, in circumstances where the Commission considers the explanation necessary or expedient for the purposes of those functions<sup>11</sup>. Such regulations may require explanations to be provided at such times and places as may be specified by the Commission<sup>12</sup>. Any person who without reasonable excuse fails to comply with any requirement imposed by virtue of these provisions is guilty of an offence<sup>13</sup>.

The Commission, or a person authorised by it, may require any of the prescribed persons<sup>14</sup> to provide to the Commission or the person so authorised (as the case may be) an explanation of: (a) any documents, records or items inspected, copied or provided<sup>15</sup> to it<sup>16</sup>; (b) any information provided<sup>17</sup> to it<sup>18</sup>; or (c) any matters which are the subject of the exercise of any functions<sup>19</sup> of the Commission<sup>20</sup>, in circumstances where the Commission considers the explanation necessary or expedient for the purposes of those functions<sup>21</sup>. The Commission or the person so authorised may require the explanation to be provided in person (unless the person required to provide the explanation is a body of persons corporate or unincorporate)<sup>22</sup>, or in writing<sup>23</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the making of regulations see PARA 551. The Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, have been made: see the text to notes 14-23.

3 'Prescribed' means prescribed by regulations: Health and Social Care (Community Health and Standards) Act 2003 s 148. As to the meaning of 'person' see PARA 17 note 2.

4 As to the Commission for Healthcare Audit and Inspection see PARA 552.

5 Ie under the Health and Social Care (Community Health and Standards) Act 2003 ss 66-68: see PARAS 578, 579.

6 Health and Social Care (Community Health and Standards) Act 2003 s 69(1)(a).

7 Ie under the Health and Social Care (Community Health and Standards) Act 2003 ss 66-68: see PARAS 578, 579.

8 Health and Social Care (Community Health and Standards) Act 2003 s 69(1)(b).

9 le for the purposes of the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 3 (ss 48-69).

10 Health and Social Care (Community Health and Standards) Act 2003 s 69(1)(c).

11 Health and Social Care (Community Health and Standards) Act 2003 s 69(1).

12 Health and Social Care (Community Health and Standards) Act 2003 s 69(2).

13 Health and Social Care (Community Health and Standards) Act 2003 s 69(3). The penalty for such an offence is, on summary conviction, a fine not exceeding level 4 on the standard scale: s 69(3). As to the standard scale see PARA 28 note 12. As to the commission of offences by bodies corporate see PARA 592.

14 The prescribed persons are: (1) an NHS body (Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 2(4)(a)); (2) a chairman, member, director or employee of an NHS body other than an NHS foundation trust (reg 2(4)(b)); (3) a chairman, director or employee of an NHS foundation trust (reg 2(4)(c)); (4) a member of a committee or sub-committee of an NHS body other than an NHS foundation trust (reg 2(4)(d)); (5) a member of a committee or sub-committee of the board of directors of an NHS foundation trust (reg 2(4)(e)); (6) a service provider (reg 2(4)(f)); (7) a chairman, director or employee of a service provider (reg 2(4)(g)); (8) a person (other than a person prescribed in head (7) above) who is assisting a service provider in the provision of health care for an NHS body (reg 2(4)(h)); (9) a local authority or a member or officer of a local authority (reg 2(4)(i)); (10) an elected mayor of a local authority within the meaning of the Local Government Act 2000 s 39(1) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 320) (Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 2(4)(j)); (11) a person (other than a person prescribed in heads (1)-(10) above) who is assisting an NHS body in the exercise of its functions (reg 2(4)(k)). As to the meaning of 'NHS body' see PARA 548 note 1. As to NHS foundation trusts see PARA 174. 'Service provider' means a person who provides, has provided or is to provide health care for an NHS body: reg 1(3). As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3. As to the meaning of 'local authority' see PARA 579 note 11.

15 le under the Health and Social Care (Community Health and Standards) Act 2003 ss 66-68: see PARAS 578, 579.

16 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 4(1)(a).

17 le under the Health and Social Care (Community Health and Standards) Act 2003 ss 66-68: see PARAS 578, 579.

18 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 4(1)(b).

19 le under the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 3 (ss 48-69).

20 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 4(1)(c).

21 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 4(1).

22 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 4(2)(a). Where the Commission or the person so authorised requires the explanation to be provided in person, the explanation must be provided at a time and place specified by the Commission, and the Commission must give the person required to provide the explanation reasonable notice of that time and place: reg 4(3).

23 Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 4(2)(b). As to the meaning of 'writing' see PARA 7 note 2.

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **580 Power to require explanation**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 69 repealed as from a day to be appointed: Health and Social Care Act 2008 Sch 5 para 40, Sch 15 Pt 1. SI 2004/557 revoked: SI 2009/462. As to the power of the Care Quality Commission to require explanation, see the Health and Social Care Act 2008 s 65.

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### **581. Co-operation with other bodies.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> and the Independent Regulator of NHS Foundation Trusts<sup>2</sup> must co-operate with each other in the exercise of their respective functions<sup>3</sup>. In particular, for these purposes, the Commission must keep the regulator informed about the provision of health care<sup>4</sup> by and for NHS foundation trusts<sup>5</sup>; and the regulator must give to the Commission any information it has about the provision of health care by or for an NHS foundation trust which it considers would assist the Commission in the discharge of its functions<sup>6</sup>.

The Commission and the Audit Commission<sup>7</sup> must co-operate with each other in relation to matters in respect of which both have functions<sup>8</sup>. The Commission must co-operate with the Auditor General for Wales<sup>9</sup> where it seems to it appropriate to do so for the efficient and effective discharge of its functions<sup>10</sup>. The Commission must also consult the Auditor General for Wales<sup>11</sup>, and take into account any relevant work done or being done by him<sup>12</sup>, before exercising its functions in respect of reviews<sup>13</sup> in relation to a Welsh NHS body<sup>14</sup>.

The Commission and the Commission for Social Care Inspection<sup>15</sup> must co-operate with each other where it seems to them appropriate to do so for the efficient and effective discharge of their respective functions<sup>16</sup>. The Commission must co-operate with Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>17</sup> where it seems to the Commission appropriate to do so for the efficient and effective discharge of its functions<sup>18</sup>, and the functions of the Chief Inspector<sup>19</sup>. The Commission and the Commission for Social Care Inspection must, in prescribed<sup>20</sup> circumstances, consult each other or the Chief Inspector in relation to the proposed exercise of their functions<sup>21</sup>. The Commission may delegate to the Commission for Social Care Inspection or the Chief Inspector any of its functions to be exercised by the Commission for Social Care Inspection or the Chief Inspector (as the case may be) on its behalf<sup>22</sup>. The Commission for Social Care Inspection may delegate to the Commission any of its functions to be exercised by the Commission on its behalf<sup>23</sup>. The Commission and the Commission for Social Care Inspection may, subject to such conditions as may be prescribed, enter into arrangements for the pooling of financial resources with the other or with the Chief Inspector whenever the Commission or the Commission for Social Care Inspection (as the case may be) considers it appropriate to do so<sup>24</sup>.

The Welsh Ministers<sup>25</sup> and the Commission must co-operate with each other for the efficient and effective discharge of any function<sup>26</sup> of the Commission relating to the quality of health care<sup>27</sup> and any function of the Welsh Ministers in relation thereto<sup>28</sup>. This provision also relates to any function of the Commission under the Care Standards Act 2000<sup>29</sup>, and certain functions of the Welsh Ministers under that Act<sup>30</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552. As to functions of the Commission see PARA 561.

2 As to the Independent Regulator of NHS Foundation Trusts and its functions see PARA 188.

- 3 See the Health and Social Care (Community Health and Standards) Act 2003 s 61(1).
- 4 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.
- 5 Health and Social Care (Community Health and Standards) Act 2003 s 61(2)(a). As to NHS foundation trusts see PARA 174.
- 6 Health and Social Care (Community Health and Standards) Act 2003 s 61(2)(b).
- 7 As to the meaning of 'Audit Commission' see PARA 573 note 12.
- 8 Health and Social Care (Community Health and Standards) Act 2003 s 65.
- 9 As to the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 10 Health and Social Care (Community Health and Standards) Act 2003 s 145A(1) (s 145A added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 57, 61).
- 11 Health and Social Care (Community Health and Standards) Act 2003 s 145A(2)(a) (as added: see note 10).
- 12 Health and Social Care (Community Health and Standards) Act 2003 s 145A(2)(b) (as added: see note 10).
- 13 As to its functions under the Health and Social Care (Community Health and Standards) Act 2003 s 51: see PARA 565.
- 14 Health and Social Care (Community Health and Standards) Act 2003 s 145A(2) (as added: see note 10). This requirement does not apply in the case of a review requested by the Secretary of State under section 51(2): s 145A(3) (as so added). As to the Secretary of State see PARA 6 note 8. As to the meaning of 'Welsh NHS body' see PARA 548 note 1.
- 15 As to the Commission for Social Care Inspection see **SOCIAL SERVICES AND COMMUNITY CARE**.
- 16 Health and Social Care (Community Health and Standards) Act 2003 s 120(1). As to joint reviews and investigations by these two bodies see PARA 582.
- 17 As to Her Majesty's Chief Inspector of Education, Children's Services and Skills see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 196; **EDUCATION**.
- 18 Health and Social Care (Community Health and Standards) Act 2003 s 120(1A)(a) (s 120(1A) added by the Education and Inspections Act 2006 s 157, Sch 14 paras 82, 91(1), (2)).

19 Health and Social Care (Community Health and Standards) Act 2003 s 120(1A)(b) (as added: see note 18). The functions of the Chief Inspector referred to are those under the Education and Inspections Act 2006 Pt 8 Ch 4 (ss 135-142): see **EDUCATION**.

20 'Prescribed' means prescribed by regulations made by the Secretary of State: Health and Social Care (Community Health and Standards) Act 2003 s 148. As to the making of regulations see PARA 551. At the date at which this volume states the law no such regulations had been made.

21 Health and Social Care (Community Health and Standards) Act 2003 s 120(2) (amended by the Education and Inspections Act 2006 Sch 14 paras 82, 91(1), (3)).

22 Health and Social Care (Community Health and Standards) Act 2003 s 120(3) (s 120(3) substituted, (3A) added, by the Education and Inspections Act 2006 Sch 14 paras 82, 91(1), (4)).

23 Health and Social Care (Community Health and Standards) Act 2003 s 120(3A) (as added: see note 22).

24 Health and Social Care (Community Health and Standards) Act 2003 s 120(4) (amended by the Education and Inspections Act 2006 Sch 14 paras 82, 91(1), (5)). The Commission and the Commission for Social Care Inspection may enter into arrangements for the pooling of financial resources, if the following two conditions are met: Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004, SI 2004/557, reg 4(1). The first condition is that the Commission and the Commission for Social Care Inspection have entered into an agreement specifying: (1) the purposes for which the pooled resources (the 'pooled fund') are to be used (reg 4(2)(a)); (2) the contributions that they are each to make to the pooled fund (reg 4(2)(b)); (3) any staff, goods, services or accommodation that either of them is to provide in connection with the arrangements (reg 4(2)(c)); (4) the duration of the arrangements, and how the arrangements are to be reviewed, varied or terminated (reg 4(2)(d)); and (5) how the pooled fund is to be managed and monitored, including provision for one of the Commission or the Commission for Social Care Inspection (the 'host partner') to be responsible for the preparation of accounts for the pooled fund and for arranging the audit of those accounts (reg 4(2)(e)). The second condition is that the host partner has appointed an officer to be responsible for submitting to the Commission and the Commission for Social Care Inspection quarterly reports, an annual return about the income of, and expenditure from, the pooled fund, and such other information specified by the Commission or the Commission for Social Care Inspection as will assist the Commission or the Commission for Social Care Inspection (as the case may be) in monitoring the effectiveness of the arrangements: reg 4(3).

25 This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

26 Health and Social Care (Community Health and Standards) Act 2003 s 145(1); Government of Wales Act 2006 Sch 11 para 32.

27 Health and Social Care (Community Health and Standards) Act 2003 s 145(2)(a). The functions referred to are those under Pt 3 Ch 3 (ss 48-69).

28 Health and Social Care (Community Health and Standards) Act 2003 s 145(2)(b). The functions referred to are those under Pt 2 Ch 4 (ss 70-75) or Ch 6 (ss 92-101) other than any function of making regulations.

29 See the Health and Social Care (Community Health and Standards) Act 2003 s 145(2)(c). As to such functions see PARA 748 et seq.

30 See the Health and Social Care (Community Health and Standards) Act 2003 s 145(2)(d); Government of Wales Act 2006 Sch 11 para 32. The functions are those exercisable by virtue of the Care Standards Act 2000 s 5(1)(b) (see PARA 755) or s 8(1)-(3) (see PARA 757).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **581-584 Co-operation with other bodies ... Arrangements with public authorities**

Health and Social Care (Community Health and Standards) Act 2003 ss 61, 65, 120-124, 126, 145, 145A repealed: Health and Social Care Act 2008 Sch 5 paras 40, 47, 50, Sch 15 Pt 1. As to the interaction of the Care Quality Commission with other authorities, see the Health and Social Care Act 2008 ss 66-74, Sch 4; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.5.

### **581 Co-operation with other bodies**

NOTE 24--SI 2004/557 revoked: SI 2009/462.



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## **582. Joint reviews and investigations.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> and the Commission for Social Care Inspection<sup>2</sup> may exercise any of their powers to conduct reviews and investigations<sup>3</sup> in conjunction with each other<sup>4</sup>. The Commission for Healthcare Audit and Inspection may conduct a review or investigation, or undertake a study<sup>5</sup>, in conjunction with a review, investigation or study relating to any functions of an NHS body<sup>6</sup>, or to any health care provided<sup>7</sup> by or for an NHS body, which is being conducted by any other public authority<sup>8</sup>. Where a review, investigation or study is being conducted by the Commission for Healthcare Audit and Inspection in conjunction with any other authority, any report which the Commission is required to publish in relation to the review, investigation or study may consist of a joint report by the Commission and the other authority as to all the matters being investigated by both of them<sup>9</sup>.

Regulations made by the Secretary of State<sup>10</sup> may provide that, where services of a description specified in the regulations are provided under arrangements made between NHS bodies and local authorities<sup>11</sup>, the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection must jointly<sup>12</sup> review the provision by the parties to the arrangements of such services as may be specified in the regulations<sup>13</sup>, and award a performance rating in respect of those services<sup>14</sup>. The regulations may provide that the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection are to exercise these functions: (1) at such times as may be specified in the regulations<sup>15</sup>; (2) by reference to criteria determined by them and approved by the Secretary of State<sup>16</sup>. The regulations may require the Commission for Healthcare Audit and Inspection and the Commission for Social Care Inspection to publish a report after conducting a review<sup>17</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to the Commission for Social Care Inspection see **SOCIAL SERVICES AND COMMUNITY CARE**.

3 Ie under the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 (ss 41-149).

4 Health and Social Care (Community Health and Standards) Act 2003 s 121(1). Section 121 is without prejudice to any other powers of the Commission for Healthcare Audit and Inspection or the Commission for Social Care Inspection: s 121(6).

5 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 57: see PARA 573.

6 As to the meaning of 'NHS body' see PARA 548 note 1.

7 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

- 8 Health and Social Care (Community Health and Standards) Act 2003 s 121(2). See also note 4.
- 9 Health and Social Care (Community Health and Standards) Act 2003 s 121(3). See also note 4.
- 10 As to the Secretary of State see PARA 6 note 8. As to the making of regulations see PARA 551. At the date at which this volume states the law no such regulations had been made.
- 11 The arrangements under the National Health Service Act 2006 s 75 or the National Health Service (Wales) Act 2006 s 33: see PARA 233.
- 12 Health and Social Care (Community Health and Standards) Act 2003 s 122(1) (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 239, 244).
- 13 Health and Social Care (Community Health and Standards) Act 2003 s 122(1)(a).
- 14 Health and Social Care (Community Health and Standards) Act 2003 s 122(1)(b).
- 15 Health and Social Care (Community Health and Standards) Act 2003 s 122(2)(a).
- 16 Health and Social Care (Community Health and Standards) Act 2003 s 122(2)(b).
- 17 Health and Social Care (Community Health and Standards) Act 2003 s 122(3).

## UPDATE

### 552-592 [The Care Quality Commission]

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### 581-584 Co-operation with other bodies ... Arrangements with public authorities

Health and Social Care (Community Health and Standards) Act 2003 ss 61, 65, 120-124, 126, 145, 145A repealed: Health and Social Care Act 2008 Sch 5 paras 40, 47, 50, Sch 15 Pt 1. As to the interaction of the Care Quality Commission with other

authorities, see the Health and Social Care Act 2008 ss 66-74, Sch 4; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.5.

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### **583. Power to assist other public authorities.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> may if it thinks it appropriate to do so provide assistance to any other public authority in the United Kingdom<sup>2</sup> for the purpose of the exercise by that authority of its functions<sup>3</sup>. The assistance may be provided on such terms, including terms as to payment, as the Commission thinks fit<sup>4</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to the meaning of 'United Kingdom' see PARA 15 note 8.

3 See the Health and Social Care (Community Health and Standards) Act 2003 s 123(1).

4 See the Health and Social Care (Community Health and Standards) Act 2003 s 123(2).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **581-584 Co-operation with other bodies ... Arrangements with public authorities**

Health and Social Care (Community Health and Standards) Act 2003 ss 61, 65, 120-124, 126, 145, 145A repealed: Health and Social Care Act 2008 Sch 5 paras 40, 47, 50, Sch 15 Pt 1. As to the interaction of the Care Quality Commission with other authorities, see the Health and Social Care Act 2008 ss 66-74, Sch 4; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.5.

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#### **584. Arrangements with public authorities.**

Arrangements may be made between the Commission for Healthcare Audit and Inspection<sup>1</sup> and a Minister of the Crown<sup>2</sup>: (1) for the Commission to perform any of its functions in relation to any prescribed<sup>3</sup> health scheme<sup>4</sup> for which the minister has responsibility<sup>5</sup>; or (2) for the Commission to provide services or facilities in so far as they are required by the minister in connection with any such health scheme<sup>6</sup>. Arrangements may be made between the Commission and a Northern Ireland minister<sup>7</sup>: (a) for the Commission to perform on behalf of the minister any functions of the minister which correspond to any functions of the Commission<sup>8</sup> and relate to the Northern Irish health service<sup>9</sup>; (b) for the Commission to provide services or facilities in so far as they are required by the minister in connection with the exercise by him of any such functions<sup>10</sup>.

Arrangements under the above provisions may be made on such terms and conditions as may be agreed between the parties to the arrangements<sup>11</sup>; and those terms and conditions may include provision with respect to the making of payments to the Commission in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements<sup>12</sup>.

The Commission may make arrangements with the Government of the Isle of Man<sup>13</sup>, the States of Jersey<sup>14</sup>, or the States of Guernsey<sup>15</sup>, for the Commission to advise and assist that authority with respect to the provision of health care<sup>16</sup> by them or on their behalf<sup>17</sup>. The terms and conditions of such arrangements may include provision with respect to the making of payments to the Commission in respect of the cost to it of performing or providing any functions, services or facilities under the arrangements<sup>18</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to the meaning of 'Minister of the Crown' see PARA 77 note 3: definition applied by the Health and Social Care (Community Health and Standards) Act 2003 s 148.

3 'Prescribed' means prescribed by regulations made by the Secretary of State: Health and Social Care (Community Health and Standards) Act 2003 s 148. As to the making of regulations see PARA 551. As to the Secretary of State see PARA 6 note 8.

4 'Health scheme' means any scheme which appears to the Secretary of State to be a health or medical scheme paid for out of public funds: Health and Social Care (Community Health and Standards) Act 2003 s 124(6). Defence medical services are prescribed as a health scheme for these purposes: see the Commission for Healthcare Audit and Inspection (Defence Medical Services) Regulations 2008, SI 2008/1181.

5 Health and Social Care (Community Health and Standards) Act 2003 s 124(1)(a).

6 Health and Social Care (Community Health and Standards) Act 2003 s 124(1)(b).

7 'Northern Ireland minister' includes the First Minister, the deputy First Minister and a Northern Ireland department: Health and Social Care (Community Health and Standards) Act 2003 s 124(6). As to devolved government in Northern Ireland see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

8 Health and Social Care (Community Health and Standards) Act 2003 s 124(2)(a)(i).

9 Health and Social Care (Community Health and Standards) Act 2003 s 124(2)(a)(ii). Any such arrangements are not to affect the responsibility of the Northern Ireland minister on whose behalf any functions are exercised: s 124(5). 'Northern Irish health service' means any of the health services under any enactment which extends to Northern Ireland and which corresponds to the National Health Service Act 2006 s 1(1) (see PARA 10): Health and Social Care (Community Health and Standards) Act 2003 s 124(6) (definition amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 239, 245). As to the meaning of 'enactment' see PARA 10 note 7.

10 Health and Social Care (Community Health and Standards) Act 2003 s 124(2)(b).

11 Health and Social Care (Community Health and Standards) Act 2003 s 124(3).

12 Health and Social Care (Community Health and Standards) Act 2003 s 124(4).

13 Health and Social Care (Community Health and Standards) Act 2003 s 126(1)(a).

14 Health and Social Care (Community Health and Standards) Act 2003 s 126(1)(b).

15 Health and Social Care (Community Health and Standards) Act 2003 s 126(1)(c).

16 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

17 Health and Social Care (Community Health and Standards) Act 2003 s 126(1).

18 Health and Social Care (Community Health and Standards) Act 2003 s 126(2).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see

Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

**581-584 Co-operation with other bodies ... Arrangements with public authorities**

Health and Social Care (Community Health and Standards) Act 2003 ss 61, 65, 120-124, 126, 145, 145A repealed: Health and Social Care Act 2008 Sch 5 paras 40, 47, 50, Sch 15 Pt 1. As to the interaction of the Care Quality Commission with other authorities, see the Health and Social Care Act 2008 ss 66-74, Sch 4; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.5.

**584 Arrangements with public authorities**

NOTE 4--SI 2008/1181 revoked: SI 2009/462.

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### **585. Annual and other reports.**

As soon as possible after the end of each financial year<sup>1</sup> the Commission for Healthcare Audit and Inspection<sup>2</sup> must make a report on each of the following: (1) the way in which it has exercised its functions during the year<sup>3</sup>; (2) the provision of health care<sup>4</sup> by or for NHS bodies<sup>5</sup>; (3) what it has found in the course of exercising its functions during the year in relation to the persons<sup>6</sup> for whom it is the registration authority under the Care Standards Act 2000<sup>7</sup>. The Commission must lay before Parliament a copy of each such report<sup>8</sup>, and must send a copy of each report to the Secretary of State<sup>9</sup> and the Welsh Ministers<sup>10</sup>.

The Commission must also provide the Secretary of State with such reports and information relating to the exercise of its functions as he may from time to time request<sup>11</sup>.

1 As to the meaning of 'financial year' see PARA 560 note 11.

2 As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 Health and Social Care (Community Health and Standards) Act 2003 s 128(1)(a). As to the functions of the Commission see PARA 561.

4 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

5 Health and Social Care (Community Health and Standards) Act 2003 s 128(1)(b). As to the meaning of 'NHS body' see PARA 548 note 1.

6 As to the meaning of 'person' see PARA 17 note 2.

7 Health and Social Care (Community Health and Standards) Act 2003 s 128(1)(c). As to the Commission as the registration authority under the Care Standards Act 2000 see PARA 755.

8 Health and Social Care (Community Health and Standards) Act 2003 s 128(2). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

9 As to the Secretary of State see PARA 6 note 8.

10 Health and Social Care (Community Health and Standards) Act 2003 s 128(3); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.



11 Health and Social Care (Community Health and Standards) Act 2003 s 128(4).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **585 Annual and other reports**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 128 repealed: Health and Social Care Act 2008 Sch 5 para 47, Sch 15 Pt 1. See now the Health and Social Care Act 2008 s 83.

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#### **586. Duty to have regard to government policy.**

In exercising its functions the Commission for Healthcare Audit and Inspection<sup>1</sup> must have regard to such aspects of government policy as the Secretary of State<sup>2</sup> may direct<sup>3</sup>.

However, this obligation does not apply in relation to the Commission's general function to encourage improvement in the provision of health care<sup>4</sup>, or to any of its functions in relation to the publication of performance data<sup>5</sup>, the conduct of reviews<sup>6</sup>, or reporting on failings<sup>7</sup>. In exercising any of these functions: (1) where the exercise relates to the provision of health care by or for an English NHS body<sup>8</sup> or cross-border SHA<sup>9</sup>, the Commission must have regard to such aspects of government policy as the Secretary of State may direct<sup>10</sup>; and (2) where the exercise relates to the provision of health care by or for a Welsh NHS body<sup>11</sup>, the Commission must have regard to such aspects of the Welsh Ministers' policy as the Welsh Ministers may direct<sup>12</sup>.

In relation to any additional function relating to the provision of health care by or for NHS bodies<sup>13</sup> conferred on the Commission by regulations<sup>14</sup>, the regulations may do either or both of the following: (a) they may disapply the obligation to have regard to government policy<sup>15</sup> in relation to that function<sup>16</sup>; (b) they may require the Commission, in exercising the function in relation to the provision of health care by or for a Welsh NHS body, to have regard to such aspects of the Welsh Ministers' policy as the Welsh Ministers may direct<sup>17</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552. As to the functions of the Commission see PARA 561. As to the discharge of functions see PARA 562.

2 As to the Secretary of State see PARA 6 note 8.

3 See the Health and Social Care (Community Health and Standards) Act 2003 s 130(1). A direction under s 130 must be given in writing (s 130(5)(a)), and may be varied or revoked by a further such direction (s 130(5)(b)). As to the meaning of 'writing' see PARA 7 note 2.

4 In its function under the Health and Social Care (Community Health and Standards) Act 2003 s 48(1): see PARA 561. As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

5 In its function under the Health and Social Care (Community Health and Standards) Act 2003 s 49: see PARA 563.

6 In its function under the Health and Social Care (Community Health and Standards) Act 2003 s 51: see PARA 565.

7 See the Health and Social Care (Community Health and Standards) Act 2003 s 130(2). The function of reporting on failings is that under s 53: see PARA 568.

- 8 As to the meaning of 'English NHS body' see PARA 548 note 1.
- 9 As to the meaning of 'cross-border SHA' see PARA 548 note 1.
- 10 Health and Social Care (Community Health and Standards) Act 2003 s 130(3)(a). See also note 3.
- 11 As to the meaning of 'Welsh NHS body' see PARA 548 note 1.
- 12 Health and Social Care (Community Health and Standards) Act 2003 s 130(3)(b); Government of Wales Act 2006 Sch 11 para 32. See also note 3. This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.
- 13 As to the meaning of 'NHS body' see PARA 548 note 1.
- 14 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 58(1)(a): see PARA 561.
- 15 Ie the obligation under the Health and Social Care (Community Health and Standards) Act 2003 s 130(1): see the text to notes 1-3.
- 16 Health and Social Care (Community Health and Standards) Act 2003 s 130(4)(a).
- 17 Health and Social Care (Community Health and Standards) Act 2003 s 130(4)(b); Government of Wales Act 2006 Sch 11 para 32.

## UPDATE

### 552-592 [The Care Quality Commission]

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### 586 Duty to have regard to government policy

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 130 repealed: Health and Social Care Act 2008 Sch 5 para 47, Sch 15 Pt 1.



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### **587. Failure in discharge of functions.**

Where the Secretary of State<sup>1</sup> considers that the Commission for Healthcare Audit and Inspection<sup>2</sup> is to a significant extent failing to discharge any of its functions<sup>3</sup>, or failing properly to discharge any of those functions<sup>4</sup>, he may give a direction to the Commission<sup>5</sup>. The Secretary of State must consult the Welsh Ministers<sup>6</sup> before giving a direction in respect of a failure which<sup>7</sup>: (1) relates to the Commission's general function to encourage improvement in the provision of health care<sup>8</sup>, or to any of its functions in relation to the publication of performance data<sup>9</sup>, the conduct of reviews<sup>10</sup>, or reporting on failings<sup>11</sup>; and (2) relates to the provision of health care by or for a Welsh NHS body<sup>12</sup>. Regulations<sup>13</sup> may, in relation to any additional function conferred on the Commission in respect of the provision of health care by or for NHS bodies<sup>14</sup>, provide that: (a) the Welsh Ministers, and not the Secretary of State, may give directions under these provisions to the Commission<sup>15</sup>; (b) the Welsh Ministers, as well as the Secretary of State, may give such directions to the Commission<sup>16</sup>.

The Commission must comply with any direction given to it<sup>17</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 Health and Social Care (Community Health and Standards) Act 2003 s 132(1)(a). The functions referred to are those under the Health and Social Care (Community Health and Standards) Act 2003: see PARA 561.

4 Health and Social Care (Community Health and Standards) Act 2003 s 132(1)(b).

5 Health and Social Care (Community Health and Standards) Act 2003 s 132(1). A direction must be given in writing (s 132(5)(a)) and may be varied or revoked by a further such direction (s 132(5)(b)). As to the meaning of 'writing' see PARA 7 note 2. As to inquiries into the exercise by the Commission of any of its functions see PARA 588.

6 Functions under the Health and Social Care (Community Health and Standards) Act 2003 s 132 were originally vested in the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

7 Health and Social Care (Community Health and Standards) Act 2003 s 132(2); Government of Wales Act 2006 Sch 11 para 32.

8    le its function under the Health and Social Care (Community Health and Standards) Act 2003 s 48(1): see PARA 561. As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

9    le its function under the Health and Social Care (Community Health and Standards) Act 2003 s 49: see PARA 563.

10   le its function under the Health and Social Care (Community Health and Standards) Act 2003 s 51: see PARA 565.

11   See the Health and Social Care (Community Health and Standards) Act 2003 s 130(2)(a). The function of reporting on failings is that under s 53: see PARA 568.

12   Health and Social Care (Community Health and Standards) Act 2003 s 130(2)(b). As to the meaning of 'Welsh NHS body' see PARA 548 note 1.

13   le regulations under the Health and Social Care (Community Health and Standards) Act 2003 s 58: see PARA 561.

14   le any additional function conferred under the Health and Social Care (Community Health and Standards) Act 2003 s 58(1)(a): see PARA 561. As to the meaning of 'NHS body' see PARA 548 note 1.

15   Health and Social Care (Community Health and Standards) Act 2003 s 132(3)(a); Government of Wales Act 2006 Sch 11 para 32.

16   Health and Social Care (Community Health and Standards) Act 2003 s 132(3)(b); Government of Wales Act 2006 Sch 11 para 32.

17   Health and Social Care (Community Health and Standards) Act 2003 s 132(4).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **587 Failure in discharge of functions**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 ss 130, 132 repealed: Health and Social Care Act 2008 Sch 5 para 47, Sch 15 Pt 1. As to failure by the Care Quality Commission in the discharge of its functions, see the Health and Social Care Act 2008 s 82.

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### **588. Inquiries into exercise of functions.**

The Secretary of State<sup>1</sup> may cause an inquiry<sup>2</sup> to be held into any matter connected with the exercise by the Commission for Healthcare Audit and Inspection<sup>3</sup> of any of its functions<sup>4</sup>. The Welsh Ministers<sup>5</sup> may cause an inquiry to be held into any matter connected with the exercise by the Commission of any of its functions in relation to any health care provided<sup>6</sup> by or for a Welsh NHS body<sup>7</sup>.

Before an inquiry is begun, the Secretary of State or, as the case may be, the Welsh Ministers may give a direction that it be held in private<sup>8</sup>. Where no such direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private<sup>9</sup>. The report of the person holding the inquiry is to be published, unless the Secretary of State or, as the case may be, the Welsh Ministers consider that there are exceptional circumstances which make publication inappropriate<sup>10</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 The Local Government Act 1972 s 250(2)-(5) (powers in relation to local inquiries: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply in relation to an inquiry under the Health and Social Care (Community Health and Standards) Act 2003 s 134 as they apply in relation to a local inquiry under that section: s 134(5).

3 As to the Commission for Healthcare Audit and Inspection see PARA 552.

4 Health and Social Care (Community Health and Standards) Act 2003 s 134(1). As to the Commission's functions see PARA 561. As to the discharge of functions see PARA 562. As to the powers of the Secretary of State in cases where the Commission fails to a significant degree to discharge any of its functions see s 132; and PARA 587.

5 Functions under the Health and Social Care (Community Health and Standards) Act 2003 s 134 were originally vested in the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

6 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

7 Health and Social Care (Community Health and Standards) Act 2003 s 134(2); Government of Wales Act 2006 Sch 11 para 32. See also note 2. As to the meaning of 'Welsh NHS body' see PARA 548 note 1.

8 See the Health and Social Care (Community Health and Standards) Act 2003 s 134(3); Government of Wales Act 2006 Sch 11 para 32.



9 Health and Social Care (Community Health and Standards) Act 2003 s 134(4).

10 See the Health and Social Care (Community Health and Standards) Act 2003 s 134(6); Government of Wales Act 2006 Sch 11 para 32. Publication is to be in such manner as the Secretary of State or the Welsh Ministers consider appropriate: s 134(7).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **588 Inquiries into exercise of functions**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 134 repealed: Health and Social Care Act 2008 Sch 5 para 47, Sch 15 Pt 1. As to inquiries into the exercise of functions by the Care Quality Commission, see the Health and Social Care Act 2008 s 75.

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### **589. Disclosure of information obtained by the Commission.**

Where information has been obtained by the Commission for Healthcare Audit and Inspection<sup>1</sup> on terms or in circumstances requiring it to be held in confidence<sup>2</sup>, and relates to and identifies an individual<sup>3</sup>, a person is guilty of an offence if he knowingly or recklessly discloses such information during the lifetime of the individual to which it relates<sup>4</sup>.

It is a defence for a person charged with such an offence to prove<sup>5</sup> that at the time of the alleged offence any of the specified circumstances applied in relation to the disclosure in question<sup>6</sup>, or he reasonably believed that they applied<sup>7</sup>. The specified circumstances are that: (1) the disclosure was made in a form in which the individual to whom it relates is not identified<sup>8</sup>; (2) the disclosure was made with the consent of the individual to whom the information relates<sup>9</sup>; (3) the information disclosed had previously been lawfully disclosed to the public<sup>10</sup>; (4) the disclosure was made under or pursuant to regulations<sup>11</sup> relating to complaints about health care<sup>12</sup>; (5) the disclosure was made in accordance with any enactment or court order<sup>13</sup>; (6) the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual<sup>14</sup>; (7) the disclosure was made to any body or person in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising his or its functions under any enactment<sup>15</sup>. It is also a defence for a person charged with an such offence to prove that the disclosure was made: (a) for the purposes of facilitating the exercise of any functions of the Commission (under any enactment)<sup>16</sup>; (b) in connection with the investigation of a criminal offence (whether or not in the United Kingdom)<sup>17</sup>; (c) for the purpose of criminal proceedings (whether or not in the United Kingdom)<sup>18</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552. As to the use by the Commission of information obtained by it generally see PARA 590. The Commission must publish a code of its practice in relation to confidential personal information: see PARA 591.

2 Health and Social Care (Community Health and Standards) Act 2003 s 136(1)(a).

3 Health and Social Care (Community Health and Standards) Act 2003 s 136(1)(b). For these purposes, information obtained by the Commission, or any person authorised by it, is to be regarded as identifying an individual if that individual can be identified from that information (s 136(4)(a)), or from that information and from other information obtained by the Commission or any person authorised by it (s 136(4)(b)). As to the meaning of 'person' see PARA 17 note 2.

4 Health and Social Care (Community Health and Standards) Act 2003 s 136(2). A person guilty of such an offence is liable on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both (s 136(3)(a)); on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both (s 136(3)(b)). As to the statutory maximum see PARA 48 note 6. As to offences by bodies corporate see PARA 592.

5 As to the standard of proof on the accused see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1370-1371.

6 Health and Social Care (Community Health and Standards) Act 2003 s 137(1)(a).

7 Health and Social Care (Community Health and Standards) Act 2003 s 137(1)(b).

8 Health and Social Care (Community Health and Standards) Act 2003 s 137(2)(a). For these purposes, information disclosed by a person is not to be regarded as being in a form in which an individual is not identified if the individual can be identified from that information (s 137(4)(a)), or from that information and from other information disclosed by the Commission, by any person authorised by it or by any of its members or employees (s 137(4)(b)). As to the members of the Commission see PARA 553. As to the Commission's employees see PARA 558.

9 Health and Social Care (Community Health and Standards) Act 2003 s 137(2)(b).

10 Health and Social Care (Community Health and Standards) Act 2003 s 137(2)(c).

11 The regulations made under the Health and Social Care (Community Health and Standards) Act 2003 s 113: see PARA 596.

12 Health and Social Care (Community Health and Standards) Act 2003 s 137(2)(d).

13 Health and Social Care (Community Health and Standards) Act 2003 s 137(2)(e). As to the meaning of 'enactment' see PARA 10 note 7.

14 Health and Social Care (Community Health and Standards) Act 2003 s 137(2)(f).

15 Health and Social Care (Community Health and Standards) Act 2003 s 137(2)(g).

16 Health and Social Care (Community Health and Standards) Act 2003 s 137(3)(a). As to the Commission's functions see PARA 561.

17 Health and Social Care (Community Health and Standards) Act 2003 s 137(3)(b). As to the meaning of 'United Kingdom' see PARA 15 note 8.

18 Health and Social Care (Community Health and Standards) Act 2003 s 137(3)(c).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to

protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **589 Disclosure of information obtained by the Commission**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 ss 136, 137 repealed as from a day to be appointed: Health and Social Care Act 2008 Sch 5 para 47, Sch 15 Pt 1. As to disclosure of information obtained by the Care Quality Commission, see the Health and Social Care Act 2008 ss 76, 77.

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### **590. Use of information obtained.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> may, subject to the restriction on the disclosure of confidential personal information<sup>2</sup>, use any information it obtains, or documents or records produced to it, in the course of exercising any of its functions for the purposes of any of its other functions<sup>3</sup>.

The Commission may disclose any information obtained by it notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure<sup>4</sup>, where: (1) in the case of information relating to an individual, the disclosure is made in a form in which the individual to whom it relates is not identified, or the disclosure is made with the consent of the individual to whom the information relates<sup>5</sup>; (2) in any case, the disclosure is made in accordance with the law<sup>6</sup>, for the purpose of protecting the welfare of any individual<sup>7</sup>, or for the purpose of enabling any person or body<sup>8</sup> to exercise his or its functions under any enactment<sup>9</sup>; or (3) in any case, the disclosure is made for the purposes of facilitating the exercise of any functions of the Commission (under any enactment), in connection with the investigation of a criminal offence (whether or not in the United Kingdom<sup>10</sup>), or for the purpose of criminal proceedings (whether or not in the United Kingdom)<sup>11</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 Ie subject to the Health and Social Care (Community Health and Standards) Act 2003 s 136: see PARA 589.

3 Health and Social Care (Community Health and Standards) Act 2003 s 138(1). As to the Commission's functions see PARA 561. As to the discharge of functions see PARA 562. The Commission must publish a code of its practice in relation to confidential personal information: see PARA 591.

4 Health and Social Care (Community Health and Standards) Act 2003 s 138(2). As to the law relating to confidence see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 401 et seq.

5 See the Health and Social Care (Community Health and Standards) Act 2003 s 138(3)(a). Section 137(4) (see PARA 589) applies for these purposes: s 138(4).

6 Ie in circumstances in which the Health and Social Care (Community Health and Standards) Act 2003 s 137(c)-(e) applies: see PARA 589.

7 Ie in circumstances in which the Health and Social Care (Community Health and Standards) Act 2003 s 137(f) applies: see PARA 589.

8 Ie in circumstances in which the Health and Social Care (Community Health and Standards) Act 2003 s 137(g) applies: see PARA 589.

9 See the Health and Social Care (Community Health and Standards) Act 2003 s 138(3)(b).

10 As to the meaning of 'United Kingdom' see PARA 15 note 8.

11 See the Health and Social Care (Community Health and Standards) Act 2003 s 138(3)(c).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **590 Use of information obtained**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 138 repealed: Health and Social Care Act 2008 Sch 5 para 47, Sch 15 Pt 1. As to the use of information obtained by the Care Quality Commission, see the Health and Social Care Act 2008 ss 78, 79.

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### **591. Code of practice as to confidential personal information.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information<sup>2</sup>. The code must in particular make provision about the Commission's obtaining, handling, use and disclosure of confidential personal information<sup>3</sup>. Before publishing the code, the Commission must consult such persons<sup>4</sup> as it considers appropriate<sup>5</sup>. The Commission must keep the code under review and, if it considers it appropriate, from time to time publish a revised code<sup>6</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 Health and Social Care (Community Health and Standards) Act 2003 s 140(1). 'Confidential personal information' means information which is obtained by the Commission on terms or in circumstances requiring it to be held in confidence (s 140(5)(a)), and relates to and identifies an individual (s 140(5)(b)). As to the restriction on the disclosure of confidential personal information see PARA 589. As to the use by the Commission of information obtained by it or documents or records produced to it see PARA 590.

3 Health and Social Care (Community Health and Standards) Act 2003 s 140(2).

4 As to the meaning of 'person' see PARA 17 note 2.

5 Health and Social Care (Community Health and Standards) Act 2003 s 140(3). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

6 Health and Social Care (Community Health and Standards) Act 2003 s 140(4). References in s 140 to the code include any revised code: s 140(4).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008,

SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

**591 Code of practice as to confidential personal information**

TEXT AND NOTES--Health and Social Care (Community Health and Standards) Act 2003 s 140 repealed: Health and Social Care Act 2008 Sch 5 para 47, Sch 15 Pt 1. See now the Health and Social Care Act 2008 s 80.



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## **592. Offences by bodies corporate.**

Where any offence is committed by a body corporate<sup>1</sup>, if the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of: (1) any director, manager, or secretary of the body corporate<sup>2</sup>; or (2) any person who was purporting to act in any such capacity<sup>3</sup>, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly<sup>4</sup>.

1 Health and Social Care (Community Health and Standards) Act 2003 s 146(1). As to offences see PARAS 578, 579, 580, 589. As to the criminal liability of corporations see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1281. As to criminal proceedings against corporations see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1161, 1281; **MAGISTRATES** vol 29(2) (Reissue) PARA 666.

2 Health and Social Care (Community Health and Standards) Act 2003 s 146(2)(a). The reference to a director, manager or secretary of a body corporate includes a reference to any other similar officer of the body (s 146(3)(a)); and where the body is a local authority or NHS body, to any officer or member of the authority or NHS body (s 146(3)(b)). As to the meaning of 'local authority' see PARA 579 note 11. As to the meaning of 'NHS body' see PARA 548 note 1.

3 Health and Social Care (Community Health and Standards) Act 2003 s 146(2)(b).

4 Health and Social Care (Community Health and Standards) Act 2003 s 146(2).

## **UPDATE**

### **552-592 [The Care Quality Commission]**

The Commission for Healthcare Audit and Inspection is dissolved and a new body corporate known as the Care Quality Commission has been established: Health and Social Care Act 2008 s 1(1), (2). Its main objective in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services: see Pt 1 Ch 1 (ss 1-7), Schs 1, 2. Its functions include those of the Commission for Healthcare Audit and Inspection and certain other public service inspectorates, in particular, registration services in respect of provision of health or social care under Pt 1 Ch 2 (ss 8-44). As to the Care Quality Commission generally see Pt 1 Ch 1 (ss 1-7), Schs 1, 2; Care Quality Commission (Membership) Regulations 2008, SI 2008/2252; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

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### **(iii) Reviews relating to Wales**

#### **593. Reviews and investigations.**

The Welsh Ministers<sup>1</sup> have the function of conducting reviews of, and investigations into, the provision of health care<sup>2</sup> by and for Welsh NHS bodies<sup>3</sup>. The Welsh Ministers may in particular conduct: (1) a review of the overall provision of health care by and for Welsh NHS bodies<sup>4</sup>; (2) a review of the overall provision of a particular kind of health care by and for Welsh NHS bodies<sup>5</sup>; (3) a review of, or investigation into, the provision of any health care by or for a particular Welsh NHS body<sup>6</sup>. The Welsh Ministers also have the function of conducting reviews of the arrangements made by Welsh NHS bodies for the purpose of discharging their duty<sup>7</sup> to monitor and improve the quality of health care provided by them<sup>8</sup>.

Before conducting a review under these provisions the Welsh Ministers must consult the Auditor General for Wales<sup>9</sup>, and take into account any relevant work done or being done by the Auditor General for Wales<sup>10</sup>. In exercising their functions under these provisions in relation to any health care the Welsh Ministers must be concerned in particular with: (a) the availability of, and access to, the health care<sup>11</sup>; (b) the quality and effectiveness of the health care<sup>12</sup>; (c) the financial or other management of the health care and the economy and efficiency of its provision<sup>13</sup>; (d) the availability and quality of information provided to the public about the health care<sup>14</sup>; (e) the need to safeguard and promote the rights and welfare of children<sup>15</sup>; and (f) the effectiveness of measures taken for the purpose specified in head (e) above by the body in question and any person<sup>16</sup> who provides, or is to provide, health care for that body<sup>17</sup>; and must take into account the standards set out in any published statements<sup>18</sup>. For the purposes of these functions the Welsh Ministers may carry out an inspection of any Welsh NHS body<sup>19</sup>, and any other person who provides, or is to provide, health care for a Welsh NHS body (in Wales or elsewhere)<sup>20</sup>. A person authorised to do so by the Welsh Ministers may, if they consider it necessary or expedient for the purposes of a review, at any reasonable time enter and inspect any premises owned or controlled by a Welsh NHS body<sup>21</sup>; and any other premises used, or proposed to be used, for any purpose connected with the provision of health care by or for a Welsh NHS body<sup>22</sup>, or the discharge of any of the functions of a Welsh NHS body<sup>23</sup>. The Welsh Ministers have powers to require any specified person<sup>24</sup> to provide them with any information, documents, records (including personal records) or other items which relate to the provision of health care by or for a Welsh NHS body, or the discharge of any of the functions of a Welsh NHS body, and which the Ministers consider it necessary or expedient to have for the purposes of a review<sup>25</sup>. The Welsh Ministers may also make regulations requiring prescribed persons to provide them, or to persons authorised by them, an explanation of any documents, records, items or information inspected, copied or provided to them, or any matters which are the subject of a review<sup>26</sup>.

Where the Welsh Ministers conduct a review they must publish a report<sup>27</sup>. As soon as possible after the end of each financial year of theirs, the Welsh Ministers must make and publish a report or reports on what they have found during the year in the course of exercising their functions<sup>28</sup> as to reviews<sup>29</sup>, and the way in which they have during the year exercised those functions<sup>30</sup>.

- 1 The functions under the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 4 (ss 70-75), and ss 142, 143 were originally vested in the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.
- 2 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.
- 3 Health and Social Care (Community Health and Standards) Act 2003 s 70(1). As to the meaning of 'Welsh NHS body' see PARA 548 note 1. As to the duty of the Welsh Ministers to co-operate with the Commission for Healthcare Audit and Inspection see PARA 581.
- 4 Health and Social Care (Community Health and Standards) Act 2003 s 70(2)(a).
- 5 Health and Social Care (Community Health and Standards) Act 2003 s 70(2)(b).
- 6 Health and Social Care (Community Health and Standards) Act 2003 s 70(2)(c).
- 7 ie under the Health and Social Care (Community Health and Standards) Act 2003 s 45: see PARA 548.
- 8 Health and Social Care (Community Health and Standards) Act 2003 s 70(3).
- 9 Health and Social Care (Community Health and Standards) Act 2003 s 70(3A)(a) (s 70(3A) added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 57, 60). As to the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 10 Health and Social Care (Community Health and Standards) Act 2003 s 70(3A)(b) (as added: see note 9).
- 11 Health and Social Care (Community Health and Standards) Act 2003 s 70(4)(a).
- 12 Health and Social Care (Community Health and Standards) Act 2003 s 70(4)(b).
- 13 Health and Social Care (Community Health and Standards) Act 2003 s 70(4)(c).
- 14 Health and Social Care (Community Health and Standards) Act 2003 s 70(4)(d).
- 15 Health and Social Care (Community Health and Standards) Act 2003 s 70(4)(e).
- 16 As to the meaning of 'person' see PARA 17 note 2.
- 17 Health and Social Care (Community Health and Standards) Act 2003 s 70(4)(f).

18 Health and Social Care (Community Health and Standards) Act 2003 s 70(4). The standards referred to are any set out in statements published under s 47: see PARA 549.

19 Health and Social Care (Community Health and Standards) Act 2003 s 70(5)(a).

20 Health and Social Care (Community Health and Standards) Act 2003 s 70(5)(b). As to the meaning of 'Wales' see PARA 6 note 2.

21 Health and Social Care (Community Health and Standards) Act 2003 s 72(1)(a).

22 Health and Social Care (Community Health and Standards) Act 2003 s 72(1)(b)(i).

23 Health and Social Care (Community Health and Standards) Act 2003 s 72(1)(b)(ii). As to the exercise of such rights see further ss 72(2), 73.

24 The specified persons are: (1) the Welsh NHS body (Health and Social Care (Community Health and Standards) Act 2003 s 74(2)(a)); (2) any person providing health care for, or exercising functions of, the Welsh NHS body (s 74(2)(b)); (3) a local authority in Wales (s 74(2)(c)). As to the meaning of 'local authority' see PARA 579 note 11.

25 See the Health and Social Care (Community Health and Standards) Act 2003 s 74. The Welsh Ministers may use any such information they obtain, or such documents produced to them, for the purposes of certain other of their functions: see s 143.

26 See the Health and Social Care (Community Health and Standards) Act 2003 s 75. As to the regulations made see the Health and Social Care (Community Health and Standards) Act 2003 (Healthcare Inspections) (Wales) Regulations 2005, SI 2005/424.

27 Health and Social Care (Community Health and Standards) Act 2003 s 70(6). As to the making of a further report where significant failings in service provision are found see PARA 594.

28 Ie their functions under the Health and Social Care (Community Health and Standards) Act 2003 Pt 2 Ch 4 (ss 70-75).

29 See the Health and Social Care (Community Health and Standards) Act 2003 s 142(a)(i). This provision does not apply to any function of making regulations: see s 142(a)(i).

30 Health and Social Care (Community Health and Standards) Act 2003 s 142(b).

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#### **594. Reports as to failings.**

The Welsh Ministers<sup>1</sup> must report to the Secretary of State<sup>2</sup> where, after conducting a review or investigation into the provision of health care<sup>3</sup> by and for Welsh NHS bodies<sup>4</sup>, they are of the view that: (1) there are significant failings in relation to the provision of health care by or for an English NHS body or cross-border SHA<sup>5</sup>; (2) there are significant failings in the running of an English NHS body or cross-border SHA<sup>6</sup>; or (3) there are significant failings in the running of any body, or the practice of any individual, providing health care for an English NHS body or cross-border SHA<sup>7</sup>. Such a report may include a recommendation that, with a view to remedying the failings, the Secretary of State take special measures in relation to the English NHS body or cross-border SHA<sup>8</sup>; and in a case falling within head (3) above, any person<sup>9</sup>, other than a Welsh NHS body, referred to in that head<sup>10</sup>.

The Welsh Ministers must report to the Independent Regulator of NHS Foundation Trusts<sup>11</sup> where, after conducting a review or investigation into the provision of health care by and for Welsh NHS bodies, it is of the view that: (a) there are significant failings in relation to the provision of health care by or for an NHS foundation trust<sup>12</sup>; (b) there are significant failings in the running of an NHS foundation trust<sup>13</sup>; or (c) there are significant failings in the running of any body, or the practice of any individual, providing health care for an NHS foundation trust<sup>14</sup>. Such a report may include a recommendation that, with a view to remedying the failings, the regulator take special measures in relation to the NHS foundation trust<sup>15</sup>.

A report under these provisions must give the Welsh Ministers' reasons for their view and for any recommendation made<sup>16</sup>.

1 The functions under the Health and Social Care (Community Health and Standards) Act 2003 s 71 were originally vested in the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

2 As to the Secretary of State see PARA 6 note 8.

3 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

4 I.e. a review or investigation under the Health and Social Care (Community Health and Standards) Act 2003 s 70: see PARA 593. As to the meaning of 'Welsh NHS body' see PARA 548 note 1.

5 Health and Social Care (Community Health and Standards) Act 2003 s 71(1)(a). As to the meanings of 'English NHS body' and 'cross-border SHA' see PARA 548 note 1.

6 Health and Social Care (Community Health and Standards) Act 2003 s 71(1)(b).

7 Health and Social Care (Community Health and Standards) Act 2003 s 71(1)(c).

- 8 Health and Social Care (Community Health and Standards) Act 2003 s 71(2)(a).
- 9 As to the meaning of 'person' see PARA 17 note 2.
- 10 Health and Social Care (Community Health and Standards) Act 2003 s 71(2)(b).
- 11 As to the Independent Regulator of NHS Foundation Trusts see PARA 188.
- 12 Health and Social Care (Community Health and Standards) Act 2003 s 71(3)(a). As to NHS foundation trusts see PARA 174.
- 13 Health and Social Care (Community Health and Standards) Act 2003 s 71(3)(b).
- 14 Health and Social Care (Community Health and Standards) Act 2003 s 71(3)(c).
- 15 Health and Social Care (Community Health and Standards) Act 2003 s 71(4).
- 16 Health and Social Care (Community Health and Standards) Act 2003 s 71(5).

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#### **(iv) Wales Centre for Health**

##### **595. Wales Centre for Health.**

There is a body corporate known as the Wales Centre for Health or Canolfan Iechyd Cymru<sup>1</sup>. The Wales Centre for Health is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Centre's property is not to be regarded as property of, or held on behalf of, the Crown<sup>2</sup>. The Centre consists of such number of members appointed by the Welsh Ministers<sup>3</sup> as they may determine<sup>4</sup>. The Welsh Ministers are to appoint one of the members of the Centre as its chairman<sup>5</sup>. The Welsh Ministers may make payments to the Centre of such amounts, at such times and on such conditions (if any), as they consider appropriate<sup>6</sup>.

The Centre must: (1) develop and maintain arrangements for making information about matters related to the protection and improvement of health in Wales<sup>7</sup> available to the public in Wales<sup>8</sup>; (2) undertake and commission research into such matters<sup>9</sup>; (3) contribute to the provision and development of training in such matters<sup>10</sup>. The Welsh Ministers may by regulations<sup>11</sup> make provision about: (a) additional functions relating to the protection and improvement of health in Wales which the Centre is to exercise<sup>12</sup>; (b) persons<sup>13</sup>, or groups of persons, to whom information and advice are to be given by the Centre<sup>14</sup>; (c) reports which are to be published by the Centre<sup>15</sup>. The Welsh Ministers may by order make provision for the transfer to them of any or all of the Centre's functions<sup>16</sup>.

The Centre must carry out its functions effectively, economically and efficiently<sup>17</sup>. The Centre may do anything which it considers necessary or expedient for the purpose of, or in connection with, the exercise of its functions<sup>18</sup>; including, in particular co-operating with other public authorities<sup>19</sup>, acquiring and disposing of land<sup>20</sup> and other property<sup>21</sup>, and entering into contracts<sup>22</sup>. The Centre may charge such fees as it considers appropriate for the provision of advice, information or assistance to any person<sup>23</sup>. The Centre may make arrangements with such persons as it considers appropriate to assist it in the discharge of any function<sup>24</sup>. As soon as practicable after the end of each financial year the Centre must report to the Welsh Ministers on the exercise of its functions during the year<sup>25</sup>, and must publish the report<sup>26</sup>. The Centre must also provide the Welsh Ministers with such other information relating to the exercise of the Centre's functions as they may request<sup>27</sup>.

If it appears to the Welsh Ministers that there has been a serious failure by the Centre to perform any function which it considers should have been performed by the Centre, they may give the Centre such directions as they may consider appropriate for remedying that failure<sup>28</sup>. The Centre must comply with any such direction<sup>29</sup>.

1 See the Health (Wales) Act 2003 s 2(1).

2 Health (Wales) Act 2003 Sch 2 para 1. As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

- 3 The functions under the Health (Wales) Act 2003 ss 2, 3, Sch 2 were originally vested in the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.
- 4 Health (Wales) Act 2003 s 2(2). For further provision as to the members of the Centre see Sch 2 paras 10-13.
- 5 Health (Wales) Act 2003 s 2(3).
- 6 Health (Wales) Act 2003 s 2(4). As to provision relating to accounts and audit see Sch 2 paras 23-27.
- 7 As to the meaning of 'Wales' see PARA 6 note 2.
- 8 Health (Wales) Act 2003 s 3(1)(a). This function must be carried out with a view to ensuring that members of the public in Wales are kept informed about matters which the Centre considers might significantly affect their health: s 3(2).
- 9 Health (Wales) Act 2003 s 3(1)(b).
- 10 Health (Wales) Act 2003 s 3(1)(c).
- 11 At the date at which this volume states the law no such regulations had been made.
- 12 Health (Wales) Act 2003 s 3(3)(a).
- 13 As to the meaning of 'person' see PARA 17 note 2.
- 14 Health (Wales) Act 2003 s 3(3)(b).
- 15 Health (Wales) Act 2003 s 3(3)(c).
- 16 Health (Wales) Act 2003 s 3(4). Where such an order makes provision for the transfer of all of the Centre's functions, the order may include provision for the abolition of the Centre: s 3(5). An order may include provision for the transfer of staff of the Centre and of any property, rights and liabilities to which the Centre is entitled or subject and may in particular: (1) provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order (s 3(6)(a)); (2) provide for the creation of interests in, or rights over, property transferred or retained or for the creation of new rights and liabilities between the Centre and the Welsh Ministers (s 3(6)(b)); (3) provide for the order to have effect in spite of any provisions (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by the order (s 3(6)(c)). At the date at which this volume states the law no such order had been made.
- 17 Health (Wales) Act 2003 Sch 2 para 2. Anything authorised or required to be done by the Centre may be done by any member or member of staff of the Centre who, or any committee or sub-committee of the Centre which, is authorised for the purpose by the Centre (whether generally or specially): Sch 2 para 3. As to the



appointment of a chief executive and other staff see Sch 2 paras 4, 5, 8, 9, 14-19. As to the appointment of committees and sub-committees, and as to the proceedings of these and the Centre see Sch 2 para 10.

18 Health (Wales) Act 2003 Sch 2 para 20(1).

19 Health (Wales) Act 2003 Sch 2 para 20(2)(a).

20 As to the meaning of 'land' see PARA 24 note 2.

21 Health (Wales) Act 2003 Sch 2 para 20(2)(b).

22 Health (Wales) Act 2003 Sch 2 para 20(2)(c).

23 Health (Wales) Act 2003 Sch 2 para 21.

24 Health (Wales) Act 2003 Sch 2 para 22(1). Arrangements may include the payment of fees to such persons: Sch 2 para 22(2).

25 Health (Wales) Act 2003 Sch 2 para 29(1).

26 Health (Wales) Act 2003 Sch 2 para 29(2).

27 Health (Wales) Act 2003 Sch 2 para 29(3).

28 Health (Wales) Act 2003 Sch 2 para 6. A direction must be given in writing (Sch 2 para 8); and must include a statement summarising the reasons for giving it (Sch 2 para 7).

29 See the Health (Wales) Act 2003 Sch 2 para 9.

## **UPDATE**

### **595 Wales Centre for Health**

TEXT AND NOTES--Replaced. The Wales Centre for Health (Transfer of Functions, Property, Rights and Liabilities and Abolition) (Wales) Order 2009, SI 2009/2623, abolishes, on 1 October 2009, the body known as the Wales Centre for Health. The Welsh Ministers (Transfer of Property, Rights and Liabilities) (Wales) Order 2009, SI 2009/2618, transfers the property, rights and liabilities of the Wales Centre for Health that were transferred to the Welsh Ministers under SI 2009/2623, to the Public Health Wales National Health Service Trust which was established by the Public Health Wales National Health Service Trust (Establishment) Order 2009, SI 2009/2058 (see PARA 155).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/A. IN GENERAL/596. Regulations about health care complaints.

## **(v) Complaints**

### **A. IN GENERAL**

#### **596. Regulations about health care complaints.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision about the handling and consideration of complaints made under the regulations about: (1) the exercise of any of the functions of an English NHS body or a cross-border SHA<sup>3</sup>; (2) the provision of health care<sup>4</sup> by or for such a body<sup>5</sup>; (3) the provision of services by such a body or any other person<sup>6</sup> in pursuance of arrangements made by the body<sup>7</sup> in relation to the exercise of the health-related functions of a local authority<sup>8</sup>. The Welsh Ministers<sup>9</sup> may by regulations<sup>10</sup> make provision about the handling and consideration of complaints made under the regulations about: (a) the exercise of any of the functions of a Welsh NHS body<sup>11</sup>; (b) the provision of health care by or for a Welsh NHS body<sup>12</sup>; (c) the provision of services by a Welsh NHS body or any other person in pursuance of arrangements made by the body<sup>13</sup> in relation to the exercise of the health-related functions of a local authority<sup>14</sup>.

Regulations under these provisions may provide for a complaint to be considered by one or more of the following: an NHS body<sup>15</sup>; the Commission for Healthcare Audit and Inspection<sup>16</sup>; an independent lay person<sup>17</sup>; an independent panel established under the regulations<sup>18</sup>; any other person or body<sup>19</sup>. The regulations may make provision for a complaint or any matter raised by a complaint: (i) in the case of regulations made by the Secretary of State, to be referred to a Health Service Commissioner for him to consider<sup>20</sup> whether to investigate the complaint or matter<sup>21</sup>; (ii) in the case of regulations made by the Welsh Ministers, to be referred to the Public Services Ombudsman for Wales for him to consider<sup>22</sup> whether to investigate the complaint or matter<sup>23</sup>; (iii) to be referred to any other person or body for him or it to consider whether to take any action otherwise than under the regulations<sup>24</sup>.

Regulations under these provisions may make provision about<sup>25</sup>: (A) the persons who may make a complaint<sup>26</sup>; (B) the complaints which may, or may not, be made under the regulations<sup>27</sup>; (C) the persons to whom complaints may be made<sup>28</sup>; (D) complaints which need not be considered<sup>29</sup>; (E) the period within which complaints must be made<sup>30</sup>; (F) the procedure to be followed in making, handling and considering a complaint<sup>31</sup>; (G) matters which are excluded from consideration<sup>32</sup>; (H) the making of a report or recommendations about a complaint<sup>33</sup>; (I) the action to be taken as a result of the complaint<sup>34</sup>; (J) different parts or aspects of a complaint to be treated differently<sup>35</sup>; (K) the production of information or documents in order to enable a complaint to be properly considered<sup>36</sup>; (L) the disclosure of information or documents relevant to a complaint to a person or body who is considering a complaint under the regulations, or to whom a complaint has been referred<sup>37</sup>; (M) complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures<sup>38</sup>.

The regulations may require<sup>39</sup>: (aa) the making of a payment, in relation to the consideration of a complaint under the regulations, by any person or body in respect of whom the complaint is made<sup>40</sup>; (bb) any such payment to be made to such person or body as may be specified in the regulations<sup>41</sup>, and of such amount as may be specified in, or calculated or determined under, the regulations<sup>42</sup>; (cc) an independent panel to review the amount chargeable under head (aa) above in any particular case and, if the panel thinks fit, to substitute a lesser amount<sup>43</sup>; (dd)

any person or body who handles or considers complaints under the regulations to make information available to the public about the procedures to be followed under the regulations<sup>44</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the duty of the Secretary of State to arrange for the provision of independent advocacy services in respect of complaints see PARA 597.

2 As to the making of regulations see PARA 551. As to the regulation made see the National Health Service (Complaints) Regulations 2004, SI 2004/1768 (see PARA 600 et seq) and the Local Involvement Networks Regulations 2008, SI 2008/528 (see PARAS 526, 527).

3 Health and Social Care (Community Health and Standards) Act 2003 s 113(1)(a). As to the meanings of 'English NHS body' and 'cross-border SHA' see PARA 548 note 1.

4 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

5 Health and Social Care (Community Health and Standards) Act 2003 s 113(1)(b).

6 As to the meaning of 'person' see PARA 17 note 2.

7 Ie under the National Health Service Act 2006 s 75 or the National Health Service (Wales) Act 2006 s 33: see PARA 233.

8 Health and Social Care (Community Health and Standards) Act 2003 s 113(1)(c) (amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 239, 242).

9 This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 paras 30, 32. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

10 At the date at which this volume states the law no such regulations had been made.

11 Health and Social Care (Community Health and Standards) Act 2003 s 113(2)(a). As to the meaning of 'Welsh NHS body' see PARA 548 note 1.

12 Health and Social Care (Community Health and Standards) Act 2003 s 113(2)(b).

13 Ie under the Health Act 1999 s 31 (repealed) or the National Health Service (Wales) Act 2006 s 33: see PARA 233.

14 Health and Social Care (Community Health and Standards) Act 2003 s 113(2)(c); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

15 Health and Social Care (Community Health and Standards) Act 2003 s 113(3)(a). As to the meaning of 'NHS body' see PARA 548 note 1.

16 Health and Social Care (Community Health and Standards) Act 2003 s 113(3)(b). As to the Commission for Healthcare Audit and Inspection see PARA 552.

17 Health and Social Care (Community Health and Standards) Act 2003 s 113(3)(c).

18 Health and Social Care (Community Health and Standards) Act 2003 s 113(3)(d).

19 Health and Social Care (Community Health and Standards) Act 2003 s 113(3)(e).

20 He under the Health Service Commissioners Act 1993, and to be treated by him as a complaint duly referred to him under s 10 of that Act: see PARA 646. As to the Health Service Commissioner see PARA 641.

21 Health and Social Care (Community Health and Standards) Act 2003 s 113(4)(a) (s 113(4)(a) amended, (4)(aa) added, by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 74, 75(a)).

22 He under the Public Services Ombudsman (Wales) Act 2005 and to be treated by him as a complaint duly referred to him under s 2(3) of that Act: see PARA 655.

23 Health and Social Care (Community Health and Standards) Act 2003 s 113(4)(aa) (as added: see note 21).

24 Health and Social Care (Community Health and Standards) Act 2003 s 113(4)(b).

25 He without prejudice to the generality of the provision under which they are made: see the Health and Social Care (Community Health and Standards) Act 2003 s 115(1).

26 Health and Social Care (Community Health and Standards) Act 2003 s 115(2)(a).

27 Health and Social Care (Community Health and Standards) Act 2003 s 115(2)(b).

28 Health and Social Care (Community Health and Standards) Act 2003 s 115(2)(c).

29 Health and Social Care (Community Health and Standards) Act 2003 s 115(2)(d).

30 Health and Social Care (Community Health and Standards) Act 2003 s 115(2)(e).

31 Health and Social Care (Community Health and Standards) Act 2003 s 115(2)(f).

- 32 Health and Social Care (Community Health and Standards) Act 2003 s 115(2)(g).
- 33 Health and Social Care (Community Health and Standards) Act 2003 s 115(2)(h).
- 34 Health and Social Care (Community Health and Standards) Act 2003 s 115(2)(i).
- 35 See the Health and Social Care (Community Health and Standards) Act 2003 s 115(5)(a).
- 36 See the Health and Social Care (Community Health and Standards) Act 2003 s 115(5)(b).
- 37 See the Health and Social Care (Community Health and Standards) Act 2003 s 115(5)(c). Any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure: s 115(5).
- 38 Health and Social Care (Community Health and Standards) Act 2003 s 115(6). Such provision may, in particular, include provision for: (1) enabling such a complaint to be made under the regulations (s 115(6)(a)); and (2) securing that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures (s 115(6)(b)). 'Statutory complaints procedures' means procedures established by or under any enactment: s 115(6). As to the meaning of 'enactment' see PARA 10 note 7.
- 39 Ie without prejudice to the generality of the provision under which they are made: see the Health and Social Care (Community Health and Standards) Act 2003 s 115(1).
- 40 Health and Social Care (Community Health and Standards) Act 2003 s 115(3)(a).
- 41 Health and Social Care (Community Health and Standards) Act 2003 s 115(3)(b)(i).
- 42 Health and Social Care (Community Health and Standards) Act 2003 s 115(3)(b)(ii).
- 43 Health and Social Care (Community Health and Standards) Act 2003 s 115(3)(c).
- 44 Health and Social Care (Community Health and Standards) Act 2003 s 115(4).

## **UPDATE**

### **596 Regulations about health care complaints**

TEXT AND NOTE 16--Health and Social Care (Community Health and Standards) Act 2003 s 113(3)(b) repealed: Health and Social Care Act 2008 Sch 5 para 45, Sch 15 Pt 1.

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### **597. Independent advocacy service.**

The Secretary of State<sup>1</sup> must arrange, to such extent as he considers necessary to meet all reasonable requirements, for the provision of independent advocacy services<sup>2</sup>. 'Independent advocacy services' are services providing assistance (by way of representation or otherwise) to individuals making or intending to make complaints of specified descriptions relating to health services<sup>3</sup>. The Secretary of State may make such other arrangements as he considers appropriate for the provision of assistance to individuals in connection with complaints relating to the provision of services as part of the health service<sup>4</sup>.

In making arrangements under these provisions the Secretary of State must have regard to the principle that the provision of services under the arrangements should, so far as practicable, be independent of any person who is the subject of a relevant complaint<sup>5</sup>, or involved in investigating or adjudicating on such a complaint<sup>6</sup>. The Secretary of State may make payments to any person in pursuance of such arrangements<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 National Health Service Act 2006 s 248(1). As to the equivalent provision to the National Health Service Act 2006 s 248 in relation to Wales see the National Health Service (Wales) Act 2006 s 187. As to the meaning of 'Wales' see PARA 6 note 2.

3 See the National Health Service Act 2006 s 248(2). The descriptions of complaint specified are: (1) a complaint under a procedure operated by a health service body or independent provider (s 248(2)(a)); (2) a complaint under the Health and Social Care (Community Health and Standards) Act 2003 s 113(1) or (2) (see PARA 596) (National Health Service Act 2006 s 248(2)(a)); (3) a complaint to the Health Service Commissioner for England or the Public Services Ombudsman for Wales (s 248(2)(c)); (4) a complaint of a prescribed description which relates to the provision of services as part of the health service and is made under a procedure of a prescribed description (s 248(2)(d)(i)), or gives rise, or may give rise, to proceedings of a prescribed description (s 248(2)(d)(ii)). 'Health service body' means: (a) in relation to England, a body which, under the Health Service Commissioners Act 1993 s 2(1) (see PARA 643), is subject to investigation by the Health Service Commissioner for England; (b) in relation to Wales, a Welsh health service body within the meaning of the Public Services Ombudsman (Wales) Act 2005 (see PARA 655); National Health Service Act 2006 s 248(3). 'Independent provider' means: (i) in relation to England, a person who, under the Health Service Commissioners Act 1993 s 2B(1) (see PARA 643), is subject to investigation by the Health Service Commissioner for England; (ii) in relation to Wales, a person who is an independent provider in Wales within the meaning of the Public Services Ombudsman (Wales) Act 2005 (see PARA 655); National Health Service Act 2006 s 248(3). As to the meaning of 'England' see PARA 6 note 2. As to the Health Service Commissioner for England see PARA 641. As to the Public Services Ombudsman for Wales see PARA 655. 'Prescribed' means prescribed by regulations: s 275(1). At the date at which this volume states the law no such regulations had been made. As to the meaning of 'health service' see PARA 10 note 3. As to the meaning of 'person' see PARA 17 note 2.

4 National Health Service Act 2006 s 248(4).

5 National Health Service Act 2006 s 248(5)(a).

6 National Health Service Act 2006 s 248(5)(b).

7 National Health Service Act 2006 s 248(6).

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**598. Health service contractors.**

Persons<sup>1</sup> providing services under a general medical services contract, a general dental services contract, or providing ophthalmic services or pharmaceutical services, are required to have a complaints procedure to deal with any complaints in relation to the services they provide<sup>2</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 See PARAS 614-618.



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### **599. Hospital complaints procedures.**

Until a day to be appointed the following provisions have effect<sup>1</sup>.

It is the duty of the Secretary of State<sup>2</sup> to give to:

- 390 (1) each strategic health authority<sup>3</sup> and special health authority<sup>4</sup> in England and Wales;
- 391 (2) each NHS trust<sup>5</sup> which manages a hospital<sup>6</sup>; and
- 392 (3) each primary care trust<sup>7</sup> and local health board<sup>8</sup> which manages a hospital,

such directions<sup>9</sup> as appear necessary for the purpose of securing that, as respects each hospital which that body manages<sup>10</sup>: (a) such arrangements are made for dealing with complaints made by or on behalf of persons who are or have been patients<sup>11</sup> at that hospital<sup>12</sup>; and (b) such steps are taken for publicising the arrangements so made<sup>13</sup>, as (in each case) are specified or described in the directions<sup>14</sup>.

No right of appeal, reference or review conferred under these provisions precludes an investigation under the Health Service Commissioners Act 1993<sup>15</sup> in respect of any matter<sup>16</sup>.

1 As from a day to be appointed, the Hospital Complaints Procedure Act 1985 s 1 is repealed, in so far as it applies to England and Wales, by the Health and Social Care (Community Health and Standards) Act 2003 s 196, Sch 14 Pt 2: see s 199(1)-(3). At the date at which this volume states the law no such day had been appointed. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 As to the Secretary of State see PARA 6 note 8. The functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. These functions are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

3 As to strategic health authorities see PARA 94 et seq.

4 As to special health authorities see PARA 136.

5 As to NHS trusts see PARA 155.

6 As to the meaning of 'hospital' see PARA 12 note 4; definition applied by the Hospital Complaints Procedure Act 1985 s 1(3)(a).

7 As to primary care trusts see PARA 111.

8 As to the meaning of 'local health board' see PARA 17 note 13; definition applied by the Hospital Complaints Procedure Act 1985 s 1(3)(a).

9 The directions under the National Health Service Act 2006 s 8 (see PARA 16): Hospital Complaints Procedure Act 1985 s 1(1C)(a) (s 1(1B), (1C)(a) added by the Health Act 1999 s 65, Sch 4 para 71(c)).

10 See the Hospital Complaints Procedure Act 1985 s 1(1), (1A), (1B) (s 1(1) amended by the Health Authorities Act 1995 s 2(1), Sch 1 para 109(2); the Health Act 1999 s 65, Sch 4 para 71(a), Sch 5; the National Health Service Reform and Health Care Professions Act 2002 s 1(3), Sch 1 Pt 2 para 37. Hospital Complaints Procedure Act 1985 s 1(1A) added by the Health Authorities Act 1995 Sch 1 para 109(2); and amended by the Health Act 1999 Sch 4 para 71(b), Sch 5. Hospital Complaints Procedure Act 1985 s 1(1B) (as added (see note 9)); amended by the National Health Service Reform and Health Care Professions Act 2002 s 6(2), Sch 5 para 26).

11 As to the meaning of 'patient' see PARA 15 note 6; definition applied by the Hospital Complaints Procedure Act 1985 s 1(3)(a).

12 See the Hospital Complaints Procedure Act 1985 s 1(1)(a), (1A)(a) (as added: see note 10), (1B)(a) (as added: see note 9).

13 See the Hospital Complaints Procedure Act 1985 s 1(1)(b), (1A)(b) (as added: see note 10), (1B)(b) (as added: see note 9).

14 See the Hospital Complaints Procedure Act 1985 s 1(1), (1A) (as added: see note 10), (1B) (as added: see note 9).

15 As to such investigations see PARAS 644, 647.

16 Hospital Complaints Procedure Act 1985 s 1(2).

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## ***B. HANDLING AND CONSIDERATION OF COMPLAINTS BY NHS BODIES***

### **(A) COMPLAINTS ARRANGEMENTS**

#### **600. Arrangements for the handling and consideration of complaints.**

Each NHS body<sup>1</sup> must make arrangements<sup>2</sup> for the handling and consideration of complaints<sup>3</sup>. The arrangements must be accessible and such as to ensure that complaints are dealt with speedily and efficiently, and that complainants<sup>4</sup> are treated courteously and sympathetically and as far as possible involved in decisions about how their complaints are handled and considered<sup>5</sup>. The arrangements must be in writing<sup>6</sup> and a copy must be given, free of charge, to any person<sup>7</sup> who makes a request for one<sup>8</sup>.

Where an NHS trust or a primary care trust makes arrangements for the provision of services with an independent provider<sup>9</sup>, it must ensure that the independent provider has in place arrangements for the handling and consideration of complaints<sup>10</sup> about any matter connected with its provision of services<sup>11</sup>.

Each NHS body must designate one of its members, or in the case of an NHS trust a member of its board of directors, to take responsibility for ensuring compliance with the arrangements made for the handling and consideration of complaints and that action is taken in the light of the outcome of any investigation<sup>12</sup>. Each NHS body must designate a person, known as a 'complaints manager', to manage the procedures for handling and considering complaints and in particular<sup>13</sup>: (1) to perform the functions<sup>14</sup> of the complaints manager under the statutory provisions<sup>15</sup>; and (2) to perform such other functions in relation to complaints as the NHS body may require<sup>16</sup>. The functions of the complaints manager may be performed by him or by any person authorised by the NHS body to act on his behalf<sup>17</sup>. A complaints manager may be a person who is not an employee of the NHS body<sup>18</sup>; or appointed as complaints manager for more than one NHS body<sup>19</sup>.

1 'NHS body' means a strategic health authority, an NHS trust which operates from premises wholly or mainly in England, a primary care trust, and a special health authority to which the Health Service Commissioners Act 1993 s 2 (see PARA 643) applies: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1). As to the meaning of 'England' see PARA 6 note 2. As to strategic health authorities see PARA 94 et seq. As to NHS trusts see PARA 155. As to primary care trusts see PARA 111. As to the special health authorities generally see PARA 136.

2 In accordance with the National Health Service (Complaints) Regulations 2004, SI 2004/1768.

3 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3(1). The National Health Service (Complaints) Regulations 2004, SI 2004/1768, apply in relation to England only: reg 1(2). At the date at which this volume states the law no equivalent regulations had been made in relation to Wales: see PARA 596. As to the matters about which complaints may be made see PARA 602. As to the persons who may make complaints see PARA 604. As to the making of complaints see PARA 605.

- 4 As to the meaning of 'complainant' see PARA 605 note 5.
- 5 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3(2).
- 6 As to the meaning of 'writing' see PARA 7 note 2.
- 7 As to the meaning of 'person' see PARA 17 note 2.
- 8 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3(3).
- 9 'Independent provider' means a person or body, including a voluntary organisation but excluding an NHS foundation trust, which is providing services under arrangements made with an NHS body in accordance with the National Health Service Act 2006 s 12 (see PARA 17) or s 83 (see PARA 241): National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'voluntary organisation' see PARA 17 note 3. As to NHS foundation trusts see PARA 174.
- 10 ie as if the National Health Service (Complaints) Regulations 2004, SI 2004/1768, applied to it.
- 11 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3(4).
- 12 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 4.
- 13 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 5(1).
- 14 As to the meaning of 'functions' see PARA 6 note 3.
- 15 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 5(1)(a). The statutory provisions are those of Pt 2 (regs 3-13).
- 16 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 5(1)(b).
- 17 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 5(2).
- 18 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 5(3)(a) (reg 5(3) added by SI 2006/2084).
- 19 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 5(3)(b) (as added: see note 18).

## **UPDATE**

**600-615 Arrangements for the handling and consideration of complaints ...  
Complaints procedure in respect of arrangements to provide primary medical  
services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

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### **601. Publicity, monitoring and annual reports.**

Each NHS body<sup>1</sup> and the Healthcare Commission<sup>2</sup> must ensure that there is effective publicity for its complaints arrangements<sup>3</sup>. Each NHS body must take all reasonable steps to ensure that the specified persons<sup>4</sup> are informed of its arrangements, the name of its complaints manager<sup>5</sup> and the address at which he can be contacted<sup>6</sup>.

For the purpose of monitoring its complaints arrangements each NHS body must prepare a report for each quarter of the year for consideration by its Board<sup>7</sup>. The reports must: (1) specify the numbers of complaints received<sup>8</sup>; (2) identify the subject matter of those complaints<sup>9</sup>; (3) summarise how they were handled including the outcome of the investigations<sup>10</sup>; and (4) identify any complaints where the recommendations of the Healthcare Commission were not acted upon, giving the reasons why not<sup>11</sup>.

Each NHS body must prepare an annual report on its handling and consideration of complaints and send a copy of that report: (a) in the case of a strategic health authority<sup>12</sup> or special health authority<sup>13</sup>, to the Healthcare Commission<sup>14</sup>; (b) in the case of an NHS trust, to its relevant strategic health authority<sup>15</sup> and the Healthcare Commission<sup>16</sup>; and (c) in the case of a primary care trust, to its relevant strategic health authority and the Healthcare Commission<sup>17</sup>.

1 As to the meaning of 'NHS body' see PARA 600 note 1.

2 'Healthcare Commission' means the Commission for Healthcare, Audit and Inspection: see the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1). As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 20(1). As to arrangements for handling and considering complaints see PARA 600. As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

4 The specified persons are: (1) patients and their carers (National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 20(3)(a)); (2) visitors to any hospital or other premises for the management of which the NHS body is responsible (reg 20(3)(b)); (3) staff of the NHS body (reg 20(3)(c)); (4) independent providers with whom arrangements have been made under the National Health Service Act 2006 s 12 (see PARA 17) or s 83 (see PARA 241) (reg 20(3)(d); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4)); (5) any body with which it has made an NHS contract (National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 20(3)(e)). As to the meaning of 'independent provider' see PARA 600 note 9. As to the meaning of 'NHS contract' see PARA 228.

5 As to the complaints manager see PARA 600.

6 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 20(2).

- 7 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 21(1).
- 8 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 21(2)(a). As to the matters about which complaints may be made see PARA 602. As to the persons who may make complaints see PARA 604. As to the making of complaints see PARA 605.
- 9 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 21(2)(b).
- 10 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 21(2)(c). As to the investigation of and response to complaints see PARAS 606, 607.
- 11 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 21(2)(d). As to recommendations of the Healthcare Commission see PARA 613.
- 12 As to strategic health authorities see PARA 94 et seq.
- 13 As to special health authorities see PARA 136.
- 14 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 22(a).
- 15 'Relevant strategic health authority' means, in relation to an NHS trust or a primary care trust, the strategic health authority in whose area the NHS trust or primary care trust wholly or mainly exercises its functions: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1).
- 16 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 22(b).
- 17 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 22(c).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

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## (B) MAKING AND CONSIDERATION OF COMPLAINTS

### 602. Complaints.

Subject to the excluded matters set out below<sup>1</sup>, a complaint to an NHS body<sup>2</sup> may be about any matter reasonably connected with the exercise of its functions<sup>3</sup> including in particular, in the case of an NHS trust<sup>4</sup> or primary care trust<sup>5</sup>, any matter reasonably connected with: (1) its provision of health care or any other services, including in the case of a primary care trust, its provision<sup>6</sup> of primary medical services<sup>7</sup>; and (2) the function of commissioning health care or other services under an NHS contract<sup>8</sup> or making arrangements for the provision of such care or other services with an independent provider<sup>9</sup> or with an NHS foundation trust<sup>10</sup>.

The following complaints are excluded from the scope of the arrangements required for the handling and consideration of complaints:

- 393 (a) a complaint made by an NHS body which relates to the exercise of its functions by another NHS body<sup>11</sup>;
- 394 (b) a complaint made by a primary care provider<sup>12</sup> which relates either to the exercise of its functions by an NHS body or to the contract or arrangements under which it provides primary care services<sup>13</sup>;
- 395 (c) a complaint made by an employee of an NHS body about any matter relating to his contract of employment<sup>14</sup>;
- 396 (d) a complaint made by an independent provider or an NHS foundation trust about any matter relating to arrangements made by an NHS body with that independent provider or NHS foundation trust<sup>15</sup>;
- 397 (e) a complaint which relates to the provision of primary medical services in accordance with arrangements made by a primary care trust with a strategic health authority<sup>16</sup> or under a transitional agreement<sup>17</sup>;
- 398 (f) a complaint which is being or has been investigated by the Health Service Commissioner for England<sup>18</sup>;
- 399 (g) a complaint arising out of an NHS body's alleged failure to comply with a data subject request under the Data Protection Act 1998 or a request for information under the Freedom of Information Act 2000<sup>19</sup>;
- 400 (h) a complaint about which the complainant has stated in writing<sup>20</sup> that he intends to take legal proceedings<sup>21</sup>;
- 401 (i) a complaint about which an NHS body is taking or is proposing to take disciplinary proceedings<sup>22</sup> in relation to the substance of the complaint against a person who is the subject of the complaint<sup>23</sup>;
- 402 (j) a complaint the subject matter of which has already<sup>24</sup> been investigated<sup>25</sup>; and
- 403 (k) a complaint which relates to any scheme established under the Superannuation Act 1972<sup>26</sup>, or to the administration of those schemes<sup>27</sup>.

<sup>1</sup> ie subject to the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7: see the text to notes 11-27.



- 2 As to the meaning of 'NHS body' see PARA 600 note 1.
- 3 As to the meaning of 'functions' see PARA 6 note 3.
- 4 As to NHS trusts see PARA 155.
- 5 As to primary care trusts see PARA 111.
- 6 le under the National Health Service Act 2006 s 83: see PARA 241.
- 7 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 6(a); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3. As to arrangements for handling and considering complaints see PARA 600. As to the persons who may make complaints see PARA 604. As to the making of complaints see PARA 605.
- 8 As to the meaning of 'NHS contract' see PARA 228.
- 9 As to the meaning of 'independent provider' see PARA 600 note 9.
- 10 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 6(b). As to NHS foundation trusts see PARA 174.
- 11 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(a).
- 12 'Primary care provider' means: (1) a general medical services contractor; (2) a person who has entered into a default contract with a primary care trust; (3) a person who provides primary medical services in accordance with arrangements made under the National Health Service Act 2006 s 92 (see PARA 267) or under a transitional agreement; (4) a general dental services contractor; (5) a person who provides primary dental services in accordance with arrangements made under s 107 (see PARA 288); (6) an ophthalmic optician or an ophthalmic medical practitioner who provides general ophthalmic services in accordance with arrangements made under the National Health Service Act 1977 s 38 (see PARA 295); (7) a person who provides pharmaceutical services in accordance with arrangements made under the National Health Service Act 2006 s 126 (see PARA 339); and (8) a person who provides local pharmaceutical services in accordance with a pilot scheme under s 134 (see PARA 419) or in accordance with an LPS scheme: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1), (2) (amended by SI 2006/552; SI 2006/562); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). 'General medical services contractor' means a person who has entered into a general medical services contract with a primary care trust in accordance with the National Health Service Act 2006 s 84 (see PARA 242); National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'person' see PARA 17 note 2. 'Default contract' means a contract entered into under the General Medical Services Transitional and Consequential Provisions Order 2004, SI 2004/433, art 13: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1). 'Transitional agreement' means an agreement which, by virtue of the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004, SI 2004/865, art 58 is deemed to have been made under the National Health Service Act 1977 s 28C (repealed) and which has not been varied in accordance with art 59 of that Order: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1). 'General dental services contractor' means a person who has entered into a general dental services contract with a primary care trust in accordance with the National Health Service Act 2006 s 100 (see PARA 278); National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1) (definition added by SI 2006/562); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'LPS scheme' see PARA 431.

- 13 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(b). 'Primary care services' means services provided by a primary care provider: reg 2(1).
- 14 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(c).
- 15 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(d).
- 16 Ie under the National Health Service Act 2006 s 92: see PARA 267.
- 17 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(e).
- 18 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(f). As to the Health Service Commissioner for England see PARA 641.
- 19 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(g). As to the Data Protection Act 1998 and the Freedom of Information Act 2000 see **CONFIDENCE AND DATA PROTECTION**.
- 20 As to the meaning of 'writing' see PARA 7 note 2.
- 21 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(h).
- 22 'Disciplinary proceedings' means any procedure for disciplining employees adopted by an NHS body: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1).
- 23 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(i).
- 24 Ie under the National Health Service (Complaints) Regulations 2004, SI 2004/1768.
- 25 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(j) (reg 7(j), (k) added by SI 2006/2084).
- 26 Ie any scheme established under the Superannuation Act 1972 s 10 (superannuation of persons engaged in health services, etc: see PARA 711) or s 24 (compensation for loss of office, etc: see PARA 712).
- 27 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 7(k) (as added: see note 25).

## **UPDATE**

**600-615 Arrangements for the handling and consideration of complaints ...  
Complaints procedure in respect of arrangements to provide primary medical  
services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/B. HANDLING AND CONSIDERATION OF COMPLAINTS BY NHS BODIES/(B) Making and Consideration of Complaints/603. Complaints relating wholly or in part to a local authority.

### **603. Complaints relating wholly or in part to a local authority.**

Where it appears to an NHS body<sup>1</sup> considering a complaint<sup>2</sup> on or after 1 September 2006 that the complaint contains material which, had the complainant<sup>3</sup> sent it to a local authority<sup>4</sup>, would be a complaint which would fall to be handled by that authority under the Social Services Complaints Regulations<sup>5</sup>, the NHS body must, as regards that part of the complaint which would appear to be a complaint for the purposes of those regulations (the 'local authority complaint'): (1) within ten working days<sup>6</sup> of receipt of the complaint, ask the complainant whether he wishes details of the local authority complaint to be sent to the local authority to which it relates<sup>7</sup>; and (2) if the complainant does so wish, send details of the local authority complaint to that local authority as soon as reasonably practicable<sup>8</sup>.

Where a local authority handles a complaint under the Social Services Complaints Regulations in consequence of having been sent details by the NHS body, the local authority and the NHS body must cooperate with a view to the complainant receiving a coordinated response to his complaint<sup>9</sup>. The duty to cooperate includes, in particular, a duty to: (a) provide information relevant to the consideration of a complaint which is reasonably requested<sup>10</sup>; (b) attend any meeting reasonably required in connection with the consideration of a complaint<sup>11</sup>; and (c) seek to agree which of the two bodies should take the lead in coordinating the handling of the complaints against them<sup>12</sup>, and dealing with the complainant<sup>13</sup>.

Where an NHS body receives a complaint on or after 1 September 2006 which does not fall within the scope of the arrangements for the handling and consideration of complaints<sup>14</sup>, and it appears to the NHS body that the complaint contains material which, had the complainant sent it to a local authority, would be a complaint which would fall to be handled by that body under the Social Services Complaints Regulations, it must: (i) within five working days of receipt of the complaint, ask the complainant whether he wishes that material to be sent to the local authority to which it relates<sup>15</sup>; and (ii) if the complainant does so wish, send that material to that local authority as soon as reasonably practicable<sup>16</sup>.

1 As to the meaning of 'NHS body' see PARA 600 note 1.

2 ie a complaint made in accordance with the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 9: see PARA 605.

3 As to the meaning of 'complainant' see PARA 605 note 5.

4 As to the meaning of 'local authority' see PARA 579 note 11.

5 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3A(1) (regs 3A, 3B added by SI 2006/2084). 'Social Services Complaints Regulations' means the Local Authority Social Services Complaints (England) Regulations 2006, SI 2006/1681 (see **SOCIAL SERVICES AND COMMUNITY CARE**): National Health Service

(Complaints) Regulations 2004, SI 2004/1768, reg 2(1) (definition added by SI 2006/2084). As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

6 'Working day' means any day other than a Saturday, a Sunday, Christmas Day, Boxing Day, Good Friday or a day which is a bank holiday in England under the Banking and Financial Dealings Act 1971 (see **TIME** vol 97 (2010) PARA 321): National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1).

7 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3A(2)(a) (as added: see note 5). The NHS body must notify the complainant which part of the complaint will be handled in accordance with the procedure described in the National Health Service (Complaints) Regulations 2004, SI 2004/1768: reg 3A(3)(a) (as so added).

8 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3A(2)(b) (as added: see note 5). In a case where it has sent details of the local authority complaint to the local authority, the NHS body must notify the complainant that it has sent such details: reg 3A(3)(b) (as so added). Where a complaint is so referred to a local authority the complainant is deemed to have made a complaint under Local Authority Social Services Complaints (England) Regulations 2006, SI 2006/1681, reg 3 (duty to deal with complaints: see **SOCIAL SERVICES AND COMMUNITY CARE**) for the purposes of those regulations: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3A(6) (as so added).

9 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3A(4) (as added: see note 5).

10 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3A(5)(a) (as added: see note 5).

11 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3A(5)(b) (as added: see note 5).

12 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3A(5)(c)(i) (as added: see note 5).

13 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3A(5)(c)(ii) (as added: see note 5).

14 If a complaint which does not fall within the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 6: see PARA 602.

15 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3B(1)(a) (as added: see note 5).

16 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3B(1)(b) (as added: see note 5). Where a complaint is so referred to a local authority the complainant is deemed to have made a complaint under the Local Authority Social Services Complaints (England) Regulations 2006, SI 2006/1681, reg 3 (duty to deal with complaints: see **SOCIAL SERVICES AND COMMUNITY CARE**): National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 3B(2) (as so added).

## UPDATE

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

**603 Complaints relating wholly or in part to a local authority**

NOTES 5, 8, 16--SI 2006/1681 replaced: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309.

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#### **604. Persons who may make complaints.**

A complaint<sup>1</sup> may be made by: (1) a patient<sup>2</sup>; or (2) any person who is affected by or likely to be affected by the action, omission or decision of the NHS body which is the subject of the complaint<sup>3</sup>. A complaint may be made by a representative acting on behalf of such a person in any case where that person: (a) has died<sup>4</sup>; (b) is a child<sup>5</sup>; (c) is unable by reason of physical incapacity to make the complaint himself<sup>6</sup>; (d) is unable because he lacks capacity<sup>7</sup> to make the complaint himself<sup>8</sup>; or (e) has requested the representative to act on his behalf<sup>9</sup>. If in any case the complaints manager is of the opinion that a representative does or did not have a sufficient interest in the person's welfare or is unsuitable to act as a representative, he must notify that person in writing<sup>10</sup>, stating his reasons<sup>11</sup>.

1 As to complaints see PARA 602. As to arrangements for handling and considering complaints see PARA 600. As to the making of complaints see PARA 605.

2 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 8(1)(a). 'Patient' means a person who is receiving or has received services from an NHS body or an independent provider: reg 2(1). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'NHS body' see PARA 600 note 1. As to the meaning of 'independent provider' see PARA 600 note 9. As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

3 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 8(1)(b).

4 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 8(2)(a). In the case of a patient or person affected who has died, the representative must be a relative or other person who, in the opinion of the complaints manager, had or has a sufficient interest in his welfare and is a suitable person to act as representative: reg 8(3). As to the complaints manager see PARA 600.

5 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 8(2)(b). In the case of a child, the representative must be a parent, guardian or other adult person who has care of the child and where the child is in the care of a local authority or a voluntary organisation, the representative must be a person authorised by the local authority or the voluntary organisation: reg 8(5).

6 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 8(2)(c) (reg 8(2)(c), (3) amended by SI 2007/1898). In the case of a patient or person affected who is physically incapable, the representative must be a relative or other person who, in the opinion of the complaints manager, had or has a sufficient interest in his welfare and is a suitable person to act as representative: reg 8(3) (as so amended).

7 Ie within the meaning of the Mental Capacity Act 2005: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641.

8 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 8(2)(cc) (reg 8(2)(cc), (3A) added by SI 2007/1898). In the case of a patient or person affected who lacks capacity within the meaning of the

Mental Capacity Act 2005 the representative must be either a person appointed or authorised to act on his behalf under that Act or another person who, in the opinion of the complaints manager, had or has a sufficient interest in his welfare and is a suitable person to act as representative: reg 8(3A) (as so added).

9 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 8(2)(d).

10 As to the meaning of 'writing' see PARA 7 note 2.

11 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 8(4).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/B. HANDLING AND CONSIDERATION OF COMPLAINTS BY NHS BODIES/(B) Making and Consideration of Complaints/605. Making a complaint.

### **605. Making a complaint.**

Where a person<sup>1</sup> wishes to make a complaint<sup>2</sup>, he may make the complaint to the complaints manager<sup>3</sup> or any other member of the staff of the NHS body<sup>4</sup> which is the subject of the complaint<sup>5</sup>. A complaint may be made orally or in writing<sup>6</sup> (including electronically)<sup>7</sup>. Where it is made orally, the complaints manager must make a written record of the complaint which includes the name of the complainant, the subject matter of the complaint and the date on which it was made<sup>8</sup>; and where it is made in writing, the complaints manager must make a written record of the date on which it was received<sup>9</sup>.

A complaint must be made within: (1) six months<sup>10</sup> of the date on which the matter which is the subject of the complaint occurred<sup>11</sup>; or (2) six months of the date on which the matter which is the subject of the complaint came to the notice of the complainant<sup>12</sup>. However, where a complaint is made after the expiry of such period, the complaints manager may investigate it if he is of the opinion that, having regard to all the circumstances, the complainant had good reasons for not making the complaint within that period<sup>13</sup>; and notwithstanding the time that has elapsed it is still possible to investigate the complaint effectively and efficiently<sup>14</sup>.

The complaints manager must send to the complainant a written acknowledgement of the complaint within two working days<sup>15</sup> of the date on which the complaint was made<sup>16</sup>. The complaints manager must send a copy of the complaint and his acknowledgement to any person identified in the complaint as the subject of the complaint<sup>17</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to arrangements for handling and considering complaints see PARA 600. As to the matters about which complaints may be made see PARA 602. As to the persons who may make complaints see PARA 604. As to the investigation of complaints see PARA 606.

3 As to the complaints manager see PARA 600.

4 As to the meaning of 'NHS body' see PARA 600 note 1.

5 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 9(1). Any person who makes or has made a complaint in accordance with reg 9 to an NHS body is known as a 'complainant': see reg 2(1). Any reference to a complainant includes a reference to his representative: reg 8(6). As to representatives see PARA 604. As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

6 As to the meaning of 'writing' see PARA 7 note 2.

7 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 9(2).

8 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 9(2)(a).

9 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 9(2)(b). Where the complaint is made in writing it is treated as being made on the date on which it is received by the complaints manager or as the case may be, other member of the staff of the NHS body: reg 9(3).

10 As to the meaning of 'month' see PARA 28 note 16.

11 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 10(1)(a).

12 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 10(1)(b).

13 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 10(2)(a).

14 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 10(2)(b).

15 As to the meaning of 'working day' see PARA 603 note 6.

16 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 11(1). Where a complaint was made orally, the acknowledgement must be accompanied by the written record mentioned in reg 9(2)(a) (see the text to note 8) with an invitation to the complainant to sign and return it: reg 11(2). The acknowledgement sent to the complainant must include information about the right to assistance from the independent advocacy services provided under the National Health Service Act 2006 s 248 (see PARA 597): National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 11(4); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

17 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 11(3).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/B. HANDLING AND CONSIDERATION OF COMPLAINTS BY NHS BODIES/(B) Making and Consideration of Complaints/606. Investigation.

## **606. Investigation.**

The complaints manager<sup>1</sup> must investigate the complaint<sup>2</sup> to the extent necessary and in the manner which appears to him most appropriate to resolve it speedily and efficiently<sup>3</sup>. The complaints manager may, in any case where he thinks it would be appropriate to do so and with the agreement of the complainant<sup>4</sup>, make arrangements for conciliation, mediation or other assistance for the purposes of resolving the complaint, and in any such case the NHS body<sup>5</sup> must ensure that appropriate conciliation or mediation services are available<sup>6</sup>. The complaints manager must take such steps as are reasonably practicable to keep the complainant informed about the progress of the investigation<sup>7</sup>.

1 As to the complaints manager see PARA 600.

2 As to arrangements for handling and considering complaints see PARA 600. As to the matters about which complaints may be made see PARA 602. As to the persons who may make complaints see PARA 604. As to the making of complaints see PARA 605.

3 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 12(1). As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

4 As to the meaning of 'complainant' see PARA 605 note 5.

5 As to the meaning of 'NHS body' see PARA 600 note 1.

6 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 12(2).

7 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 12(3).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/B. HANDLING AND CONSIDERATION OF COMPLAINTS BY NHS BODIES/(B) Making and Consideration of Complaints/607. Response.

## **607. Response.**

The complaints manager<sup>1</sup> must prepare a written<sup>2</sup> response to the complaint<sup>3</sup> which summarises the nature and substance of the complaint, describes the investigation of the complaint<sup>4</sup> and summarises its conclusions<sup>5</sup>. The response must be signed by the chief executive of the NHS body<sup>6</sup> except in cases where for good reason the chief executive is not himself able to sign it, in which case it may be signed by a person acting on his behalf<sup>7</sup>. The response must be sent to the complainant<sup>8</sup> within 25 working days<sup>9</sup> beginning on the date on which the complaint was made, unless the complainant agrees to a longer period in which case the response may be sent within that longer period<sup>10</sup>. The response must notify the complainant of his right<sup>11</sup> to refer the complaint to the Healthcare Commission<sup>12</sup>.

1 As to the complaints manager see PARA 600.

2 As to the meaning of 'written' see PARA 7 note 2.

3 As to arrangements for handling and considering complaints see PARA 600. As to the matters about which complaints may be made see PARA 602. As to the persons who may make complaints see PARA 604. As to the making of complaints see PARA 605.

4 As to the investigation of complaints see PARA 606.

5 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 13(1). Copies of the response must be sent to any other person to whom the complaint was sent under reg 11(3) (see PARA 605): reg 13(5). As to the meaning of 'person' see PARA 17 note 2. As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

6 As to the meaning of 'NHS body' see PARA 600 note 1.

7 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 13(2).

8 As to the meaning of 'complainant' see PARA 605 note 5.

9 As to the meaning of 'working day' see PARA 603 note 6.

10 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 13(3) (substituted by SI 2006/2084).

11 lie under the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14: see PARA 608.

12 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 13(4). As to the meaning of 'Healthcare Commission' see PARA 601 note 2.

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/C. HANDLING AND CONSIDERATION OF COMPLAINTS BY THE COMMISSION FOR HEALTHCARE AUDIT AND INSPECTION/608. General complaints remit of the Commission.

### ***C. HANDLING AND CONSIDERATION OF COMPLAINTS BY THE COMMISSION FOR HEALTHCARE AUDIT AND INSPECTION***

#### **608. General complaints remit of the Commission.**

In any case<sup>1</sup> where:

- 404 (1) a complainant<sup>2</sup> is not satisfied with the result of an investigation by an NHS body<sup>3</sup>, or by an independent provider<sup>4</sup> in accordance with its arrangements for the handling and consideration of complaints<sup>5</sup>;
- 405 (2) for any reason an investigation mentioned in head (1) above has not been completed within six months<sup>6</sup> of the date on which the complaint was made<sup>7</sup>; or
- 406 (3) a complaints manager<sup>8</sup> has decided not to investigate a complaint on the grounds that it was not made within the statutory time limit<sup>9</sup>,

he may request the Healthcare Commission to consider the complaint<sup>10</sup>.

In any case where a person has made a complaint to a primary care provider<sup>11</sup> and is not satisfied with the outcome of an investigation of his complaint by the primary care provider, in accordance with its procedures for the handling and investigation of complaints, he, or a person who acted as his representative in accordance with those procedures, may request the Healthcare Commission to consider the complaint<sup>12</sup>.

A request may be made either orally or in writing<sup>13</sup> (including electronically) and must be made within six months of, or where that is not possible, as soon as reasonably practicable after, the date on which the response to the complaint<sup>14</sup> was sent to the complainant<sup>15</sup>.

1 The National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14(1) does not apply in the case of a complaint, or part of a complaint, that was made to an NHS body in accordance with reg 9 (see PARA 605) on or after 1 September 2006 which relates to the NHS Bursary Scheme, or the administration of that scheme: reg 14(1A) (reg 14(1) amended, (1A) added, by SI 2006/2084). As to the meaning of 'NHS body' see PARA 600 note 1. 'NHS Bursary Scheme' means the NHS Bursary Scheme established pursuant to the Health Services and Public Health Act 1968 s 63 (see PARA 20); National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1) (definition added by SI 2006/2084). As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

2 'Complainant' means any person who has made a complaint in accordance with the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14 or 15 (see PARA 609) to the Healthcare Commission: reg 2(1). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'Healthcare Commission' see PARA 601 note 2.

3 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14(1)(a)(i). As to investigations by NHS bodies see reg 12; and PARA 606.

4    Ie an independent provider with whom an NHS trust or primary care trust has made arrangements as mentioned in the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 6: see PARA 602. As to the meaning of 'independent provider' see PARA 600 note 9. As to NHS trusts see PARA 155. As to primary care trusts see PARA 111.

5    National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14(1)(a)(ii).

6    As to the meaning of 'month' see PARA 28 note 16.

7    National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14(1)(b).

8    As to the complaints manager see PARA 600.

9    National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14(1)(c). As to time limits see reg 10; and PARA 605.

10   National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14(1) (as amended: see note 1). As to the procedure of the Commission on receiving a complaint see PARAS 610-613.

11   As to the meaning of 'primary care provider' see PARA 602 note 12.

12   National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14(2).

13   As to the meaning of 'writing' see PARA 7 note 2.

14   Ie as mentioned in the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 13 (see PARA 607), or, as the case may be, under the complaints arrangements of the primary care provider.

15   National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 14(3) (amended by SI 2006/2084).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/C. HANDLING AND CONSIDERATION OF COMPLAINTS BY THE COMMISSION FOR HEALTHCARE AUDIT AND INSPECTION/609. Remit in relation to complaints about NHS foundation trusts.

#### **609. Remit in relation to complaints about NHS foundation trusts.**

Where a person<sup>1</sup> has made a complaint to an NHS foundation trust<sup>2</sup> and either: (1) he is not satisfied with the outcome of any investigation of that complaint by the NHS foundation trust in accordance with any procedures it may have<sup>3</sup>; or (2) the NHS foundation trust has no complaints procedures<sup>4</sup>, he may request the Healthcare Commission<sup>5</sup> to consider the complaint<sup>6</sup>. The Healthcare Commission's remit in relation to NHS foundation trusts is limited to consideration only of a complaint which: (a) is made by a patient<sup>7</sup> or any other person who is affected by, or likely to be affected by, the action or omission of the NHS foundation trust which forms the subject matter of the complaint<sup>8</sup>; and (b) is reasonably connected with the provision of health care<sup>9</sup> or other services to such persons by or for the NHS foundation trust<sup>10</sup>. Where the Healthcare Commission consider that a complaint or any part of a complaint does not fall within such remit, it must refer that complaint or part of a complaint to the Independent Regulator of NHS Foundation Trusts<sup>11</sup>.

The Healthcare Commission may not consider a complaint made under these provisions where the complaint:

- 407 (i) is one about which the complainant has stated in writing<sup>12</sup> that he intends to take legal proceedings<sup>13</sup>;
- 408 (ii) is one about which the NHS foundation trust has stated in writing that it is taking or is proposing to take disciplinary proceedings<sup>14</sup> in relation to the substance of the complaint against a person who is the subject of the complaint<sup>15</sup>;
- 409 (iii) arises out of the NHS foundation trust's alleged failure to comply with a data subject request under the Data Protection Act 1998 or a request for information under the Freedom of Information Act 2000<sup>16</sup>; or
- 410 (iv) which is being or has been investigated by the Health Service Commissioner for England<sup>17</sup>.

The Healthcare Commission must make a report to the Independent Regulator of NHS Foundation Trusts each month and when the Independent Regulator otherwise requires, which: (A) specifies the number of complaints received about NHS foundation trusts in that month, or other period specified in the request<sup>18</sup>; (B) identifies the subject matter of those complaints<sup>19</sup>; and (C) summarises how any complaints concluded during that month, or other period specified in the request, were handled, including their outcome<sup>20</sup>. The Healthcare Commission may, provided that it has the consent, which may be either express or implied, of the complainant send a copy of any complaint that it has received about an NHS foundation trust to the Independent Regulator<sup>21</sup>.

The Independent Regulator may request that the Healthcare Commission send him any complaint about an NHS foundation trust that the Healthcare Commission receives<sup>22</sup>. Where the Healthcare Commission receives such a request it must, provided that it has the consent, which may be either express or implied, of the complainant, send a copy of the complaint to the Independent Regulator, in the case of an individual request, within two days of receiving the request<sup>23</sup>, or in the case of a standing request, within two days of receipt of a complaint which falls within the terms of that request<sup>24</sup>. On receipt of a copy of a complaint<sup>25</sup> the Independent



Regulator may give his views on the complaint or its handling to the Healthcare Commission and, where he wishes to give such views, must do so as soon as reasonably practicable<sup>26</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to NHS foundation trusts see PARA 174.

3 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(1)(a). As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

4 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(1)(b).

5 As to the meaning of 'Healthcare Commission' see PARA 601 note 2.

6 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(1). This provision is expressed to be subject to reg 15(2)-(7): see below and the text to notes 7-20. The provisions in reg 8(2)-(6) (provision about representatives: see PARA 604) apply to complaints made to the Healthcare Commission about NHS foundation trusts as if: (1) the reference in reg 8(2) to reg 8(1) were a reference to reg 15(2) (reg 15(5)(a)); and (2) the references to the complaints manager in reg 8(3) and (4) were references to the Healthcare Commission (reg 15(5)(b)). A request under reg 15(1) must be made within six months of, or where that is not possible, as soon as reasonably practicable after, the date on which a response under the NHS foundation trust's complaints arrangements was sent to the complainant or, where there are no such arrangements, as soon as reasonably practicable: reg 15(6) (amended by SI 2006/2084). As to the meaning of 'month' see PARA 28 note 16. As to the meaning of 'complainant' see PARA 608 note 2. As to the procedure of the Commission on receiving a complaint see PARAS 610-613.

7 'Patient' means a person who is receiving or has received services from an NHS foundation trust: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1).

8 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(2)(a) (reg 15(2)(a), (b) amended by SI 2006/2084).

9 As to the meaning of 'health care' see PARA 548. As to the provision of health care see PARA 548 note 3.

10 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(2)(b) (as amended: see note 8).

11 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(4). As to the Independent Regulator of NHS Foundation Trusts see PARA 188.

12 As to the meaning of 'writing' see PARA 7 note 2.

13 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(3)(a).

- 14 As to the meaning of 'disciplinary proceedings' see PARA 602 note 22.
- 15 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(3)(b).
- 16 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(3)(c). As to the Data Protection Act 1998 and the Freedom of Information Act 2000 see **CONFIDENCE AND DATA PROTECTION**.
- 17 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(3)(d). As to the Health Service Commissioner for England see PARA 641.
- 18 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(7)(a) (reg 15(7) substituted by SI 2006/2084).
- 19 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(7)(b) (as substituted: see note 18).
- 20 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(7)(c) (as substituted: see note 18).
- 21 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(8) (reg 15(8)-(12) added by SI 2006/2084).
- 22 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(9) (as added: see note 21). For these purposes the Independent Regulator may make a standing request that identifies a type of complaint that he wishes to receive: reg 15(10) (as so added).
- 23 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(11)(a) (as added: see note 21).
- 24 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(11)(b) (as added: see note 21).
- 25 Ie under the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(8) (see the text to note 21) or 15(11) (see the text to notes 23-24).
- 26 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(12) (as added: see note 21).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI

2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/C. HANDLING AND CONSIDERATION OF COMPLAINTS BY THE COMMISSION FOR HEALTHCARE AUDIT AND INSPECTION/610. Decision on handling of complaint.

## **610. Decision on handling of complaint.**

On receipt of the complaint<sup>1</sup> the Healthcare Commission<sup>2</sup> must assess the nature and substance of the complaint and decide how it should be handled having regard to: (1) the views of the complainant<sup>3</sup>; (2) the views of the body complained about<sup>4</sup>; (3) in the case of a complaint about an NHS foundation trust which falls within the Commission's remit<sup>5</sup>, any views given<sup>6</sup> by the Independent Regulator of NHS Foundation Trusts<sup>7</sup>; (4) any investigation of the complaint<sup>8</sup> and any action taken as a result of such investigation<sup>9</sup>; and (5) any other relevant circumstances<sup>10</sup>.

As soon as reasonably practicable the Healthcare Commission must notify the complainant as to whether it has decided<sup>11</sup>: (a) to take no further action<sup>12</sup>; (b) to make recommendations to the body which is the subject of the complaint as to what action might be taken to resolve it<sup>13</sup>; (c) to investigate the complaint further<sup>14</sup>, whether by establishing a panel to consider it or otherwise<sup>15</sup>; (d) to consider the subject matter of the complaint as part of or in conjunction with any other investigation or review which it is conducting or proposes to conduct in the exercise of its functions<sup>16</sup>; (e) to refer the complaint to a health regulatory body<sup>17</sup>; (f) in the case of a complaint about an NHS foundation trust which falls within the Commission's remit, to refer the complaint to the Independent Regulator of NHS Foundation Trusts<sup>18</sup>; or (g) to refer the complaint<sup>19</sup> to the Health Service Commissioner for England<sup>20</sup>. For the purposes of its decision, the Healthcare Commission may distinguish one part of a complaint from another and make different proposals in respect of those different parts<sup>21</sup>; and take such advice as appears to it to be required<sup>22</sup>.

1 As to complaints see PARAS 608, 609.

2 As to the meaning of 'Healthcare Commission' see PARA 601 note 2.

3 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(1)(a). As to the meaning of 'complainant' see PARA 608 note 2. As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

4 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(1)(b).

5 Ie within the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(2): see PARA 609. As to NHS foundation trusts see PARA 174.

6 Ie pursuant to the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 15(12): see PARA 609.

7 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(1)(c) (substituted by SI 2006/2084). As to the Independent Regulator of NHS Foundation Trusts see PARA 188.

8 Ie whether under the National Health Service (Complaints) Regulations 2004, SI 2004/1768, Pt II (regs 3-13) (see PARAS 600-607) or otherwise.

9 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(1)(d).

10 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(1)(e).

11 The notice of decision: (1) must be sent to any person who or body which is the subject of the complaint (National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(3)(a)); (2) may be sent to any other body which the Healthcare Commission considers has an interest in it (reg 16(3)(b)); (3) must include the Healthcare Commission's reasons for its decision (reg 16(3)(c)); and (4) in the case of a notification under reg 16(2)(a) (see the text to note 12), must inform the complainant of his right to refer his complaint to the Health Service Commissioner for England (reg 16(3)(d)). As to the meaning of 'person' see PARA 17 note 2. As to the Health Service Commissioner for England see PARA 641.

12 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(2)(a). See also note 11.

13 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(2)(b).

14 Ie in accordance with the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 17: see PARA 611.

15 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(2)(c).

16 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(2)(d). The functions referred to are those under the Health and Social Care (Community Health and Standards) Act 2003: see PARA 561.

17 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(2)(e). 'Health regulatory body' means a body mentioned in the National Health Service Reform and Health Care Professions Act 2002 s 25(3) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294): National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1).

18 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(2)(f).

19 Ie in accordance with the Health Service Commissioners Act 1993 s 10: see PARA 646.

20 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(2)(g).

21 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(4)(a).

22 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(4)(b).

**UPDATE**

**600-615 Arrangements for the handling and consideration of complaints ...  
Complaints procedure in respect of arrangements to provide primary medical  
services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

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### **611. Investigation by the Commission.**

Where the Healthcare Commission<sup>1</sup> proposes to investigate a complaint<sup>2</sup> itself, it must, within ten working days<sup>3</sup> of the date on which it sent the notice to the complainant<sup>4</sup>, or where that is not possible, as soon as reasonably practicable, send to the complainant and any other person<sup>5</sup> to whom the notice was sent its proposed terms of reference for its investigation<sup>6</sup>. The complainant and any person or body to whom the terms of reference are sent may comment in writing<sup>7</sup> on the proposed terms of reference provided that they do so within ten working days of the date on which they were sent<sup>8</sup>.

The Healthcare Commission may conduct its investigation in any manner which seems to it appropriate, may take such advice as appears to it to be required and, having regard in particular to the views of the complainant and any person who or body which is the subject of the complaint, may appoint a panel<sup>9</sup> to hear and consider the complaint<sup>10</sup>. The Healthcare Commission may request any person or body to produce such information and documents as it considers necessary to enable a complaint to be considered properly<sup>11</sup>. However, the Healthcare Commission may not make such a request for information which is confidential and relates to a living individual unless the individual to whom the information relates has consented (such consent being either express or implied) to its disclosure and use for the purposes of the investigation of the complaint<sup>12</sup>.

1 As to the meaning of 'Healthcare Commission' see PARA 601 note 2.

2 As to complaints see PARAS 608, 609. As to decisions on the handling of complaints see PARA 610.

3 As to the meaning of 'working day' see PARA 603 note 6.

4 I.e. the notice mentioned in the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 16(2): see PARA 610. As to the meaning of 'complainant' see PARA 608 note 2.

5 As to the meaning of 'person' see PARA 17 note 2.

6 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 17(1). As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

7 As to the meaning of 'writing' see PARA 7 note 2.

8 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 17(2).

9    le in accordance with the National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18: see PARA 612.

10   National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 17(3).

11   National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 17(4). Such a request must be in writing (which may be sent electronically), must specify what information is requested and state why it is relevant to the consideration of the complaint: reg 17(5).

12   National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 17(6).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.



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## **612. Panels.**

The Healthcare Commission<sup>1</sup> may use an independent panel to hear and consider complaints<sup>2</sup>. The following persons are not eligible for membership of an independent panel<sup>3</sup>: (1) a member or employee of an NHS body<sup>4</sup>; (2) any person who is, or who has at any time been, a health care professional<sup>5</sup> or an employee of a health care professional<sup>6</sup>.

A panel may consider a complaint in any manner and adopt any procedure which appears to it to be appropriate to resolve the complaint, having regard to any representations to it which may be made by the complainant<sup>7</sup> or by the person<sup>8</sup> who is the subject of the complaint (known as the 'participants')<sup>9</sup>. The panel must ensure that the participants are kept informed in a timely manner generally; and in particular about<sup>10</sup> the composition of the panel<sup>11</sup>, the date and time of any hearing<sup>12</sup>, and the names of any person whom the panel proposes to interview or from whom it proposes to take advice or evidence<sup>13</sup>. A participant before a panel may be accompanied or represented by a friend or advocate but may not be represented by a legal representative acting as such<sup>14</sup>.

1 As to the meaning of 'Healthcare Commission' see PARA 601 note 2.

2 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(1) (substituted by SI 2006/2084). As to complaints see PARAS 608, 609. As to decisions on the handling of complaints see PARA 610. As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

3 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(2) (amended by SI 2006/2084).

4 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(2)(a). As to the meaning of 'NHS body' see PARA 600 note 1.

5 'Health care professional' means a person who is a member of a profession which is regulated by a health regulatory body: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 2(1). As to the meaning of 'health regulatory body' see PARA 610 note 17.

6 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(2)(b).

7 As to the meaning of 'complainant' see PARA 608 note 2.

8 As to the meaning of 'person' see PARA 17 note 2.

9 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(4). This provision is expressed to be subject to reg 18(5) and (6) (see the text to notes 10-14): reg 18(4) (amended by SI 2006/2084).

10 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(5) (amended by SI 2006/2084).

11 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(5)(a).

12 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(5)(b).

13 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(5)(c).

14 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 18(6).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

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### **613. Report of investigation.**

Where the Healthcare Commission<sup>1</sup> investigates a complaint<sup>2</sup> it must, as soon as reasonably practicable, prepare a written<sup>3</sup> report of its investigation which: (1) summarises the nature and substance of the complaint<sup>4</sup>; (2) describes the investigation and summarises its conclusions including any findings of fact, the Healthcare Commission's opinion of those findings and its reasons for its opinion<sup>5</sup>; (3) recommends what action should be taken and by whom to resolve the complaint<sup>6</sup>; and (4) identifies what other action, if any, should be taken and by whom<sup>7</sup>. The report may include suggestions which it considers would improve the services of an NHS body<sup>8</sup>, an NHS foundation trust<sup>9</sup> or a primary care provider<sup>10</sup>, or which would otherwise be effective for the purpose of resolving the complaint<sup>11</sup>.

The report must be sent to<sup>12</sup>: (a) the complainant<sup>13</sup> together with a letter explaining to him his right to take his complaint to the Health Service Commissioner for England<sup>14</sup>; (b) the body which was the subject of the complaint and, in the case of a complaint arising out of services provided by an independent provider<sup>15</sup>, the body which commissioned those services<sup>16</sup>; (c) in the case of a complaint involving a primary care provider<sup>17</sup>, the relevant primary care trust<sup>18</sup>; (d) any relevant strategic health authority<sup>19</sup>; and (e) in the case of a complaint involving an NHS foundation trust, the Independent Regulator of NHS Foundation Trusts<sup>20</sup>, where he so requests<sup>21</sup>. The Healthcare Commission must adapt the report to ensure that confidential information from which the identity of a living individual can be ascertained is not disclosed without the express consent of the individual to whom it relates<sup>22</sup>.

1 As to the meaning of 'Healthcare Commission' see PARA 601 note 2.

2 As to the investigation of complaints by the Commission see PARA 611. As to complaints see PARAS 608, 609. As to decisions on the handling of complaints see PARA 610.

3 As to the meaning of 'written' see PARA 7 note 2.

4 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(1)(a). As to the application of the National Health Service (Complaints) Regulations 2004, SI 2004/1768, see PARA 600 note 3.

5 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(1)(b).

6 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(1)(c).

7 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(1)(d).

8 As to the meaning of 'NHS body' see PARA 600 note 1.

- 9 As to NHS foundation trusts see PARA 174.
- 10 As to the meaning of 'primary care provider' see PARA 602 note 12.
- 11 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(2).
- 12 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(3). This provision is expressed to be subject to reg 19(4): see the text to note 22.
- 13 As to the meaning of 'complainant' see PARA 608 note 2.
- 14 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(3)(a). As to the Health Service Commissioner for England see PARA 641.
- 15 As to the meaning of 'independent provider' see PARA 600 note 9.
- 16 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(3)(b).
- 17 As to the meaning of 'primary care provider' see PARA 602 note 12.
- 18 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(3)(c). 'Relevant primary care trust' means, in relation to a primary care provider, the primary care trust which has made arrangements with that primary care provider for the provision of primary care services: reg 2(1). As to the meaning of 'primary care services' see PARA 602 note 13. As to primary care trusts see PARA 111.
- 19 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(3)(d). As to the meaning of 'relevant strategic health authority' see PARA 601 note 15.
- 20 As to the Independent Regulator of NHS Foundation Trusts see PARA 188.
- 21 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(3)(e) (substituted by SI 2006/2084). For these purposes the Independent Regulator may make an individual request for a report to be sent to him, or a standing request that identifies a type of complaint of which he wishes to receive the report: National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(3A) (added by SI 2006/2084).
- 22 National Health Service (Complaints) Regulations 2004, SI 2004/1768, reg 19(4).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/D. HEALTH SERVICE CONTRACTORS/614. Complaints procedure in respect of general medical services.

## ***D. HEALTH SERVICE CONTRACTORS***

### **614. Complaints procedure in respect of general medical services.**

A contractor under a general medical services contract<sup>1</sup> must establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the contract<sup>2</sup>. The contractor must take reasonable steps to ensure that patients are aware of the complaints procedure; the role of the primary care trust<sup>3</sup> and other bodies in relation to complaints about services under the contract; and their right to assistance with any complaint from independent advocacy services<sup>4</sup>. The contractor must take reasonable steps to ensure that the complaints procedure is accessible to all patients<sup>5</sup>.

The contractor must co-operate with: (1) any investigation of a complaint in relation to any matter reasonably connected with the provision of services under the contract undertaken by the primary care trust, and the Commission for Healthcare Audit and Inspection<sup>6</sup>; and (2) any investigation of a complaint by an NHS body<sup>7</sup> or local authority<sup>8</sup> which relates to a patient or former patient of the contractor<sup>9</sup>. The co-operation required includes answering questions reasonably put to the contractor by the primary care trust, providing any information relating to the complaint reasonably required by the primary care trust, and attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the contractor's presence at the meeting is reasonably required by the primary care trust<sup>10</sup>.

1 As to general medical services contracts see PARA 242.

2 See the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 Pt 6 para 92(1). The complaints procedure must comply with the National Health Service (Complaints) Regulations 2004, SI 2004/1768 (see PARA 600 et seq): see the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 Pt 6 para 92(1)(b). As to the duty on an NHS body to ensure that such a complaints procedure is in place see PARA 600. The National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, apply in relation to England only: reg 1(2). As to the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, and as to the equivalent regulations in relation to Wales see PARA 242 note 13.

3 As to primary care trusts see PARA 111.

4 See the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 Pt 6 para 92(2). As to independent advocacy services see PARA 597.

5 National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 Pt 6 para 92(3).

6 National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 Pt 6 para 97(1)(a). As to the Commission for Healthcare Audit and Inspection see PARA 552.

7 'NHS body' means a primary care trust, (in England and Wales and Scotland) an NHS trust, an NHS foundation trust, a strategic health authority, a local health board, a health board, a health and social services board, or a health and social services trust: National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 Pt 6 para 97(2). As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to strategic health authorities see PARA 94 et seq. As to local health boards see PARA 75.

8 'Local authority' means any of the bodies listed in the Local Authority Social Services Act 1970 s 1 (see PARA 579 note 11), the Council of the Isles of Scilly, or a council constituted under the Local Government etc, (Scotland) Act 1994 s 2: National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 Pt 6 para 97(2).

9 National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 Pt 6 para 97(1)(b).

10 See the National Health Service (General Medical Services Contracts) Regulations 2004, SI 2004/291, Sch 6 Pt 6 para 97(3).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/D. HEALTH SERVICE CONTRACTORS/615. Complaints procedure in respect of arrangements to provide primary medical services.

**615. Complaints procedure in respect of arrangements to provide primary medical services.**

A contractor under arrangements made by a strategic health authority for the provision of primary medical services<sup>1</sup> must establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the agreement<sup>2</sup>. The contractor must take reasonable steps to ensure that the complaints procedure is accessible to all patients<sup>3</sup>; and patients are aware of the name of the person responsible for the operation of the contractor's complaints procedure, the complaints procedure, the role of the strategic health authority and other bodies in relation to complaints about services under the agreement, and their right to assistance with any complaint from independent advocacy services<sup>4</sup>.

The contractor must co-operate with any investigation of a complaint in relation to any matter reasonably connected with the provision of services by the contractor undertaken by the strategic health authority and the Commission for Healthcare Audit and Inspection<sup>5</sup>. The contractor must co-operate with any investigation of a complaint by an NHS body<sup>6</sup> or local authority<sup>7</sup> which relates to a patient or former patient of the contractor<sup>8</sup>. The co-operation includes answering questions reasonably put to the contractor, providing any information relating to the complaint reasonably required, and attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the contractor's presence at the meeting is reasonably required<sup>9</sup>.

1    le arrangements made under the National Health Service Act 2006 s 92: see PARA 267. As to strategic health authorities see PARA 94 et seq.

2    National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 5 Pt 6 para 86(1). The complaints procedure must comply with the National Health Service (Complaints) Regulations 2004, SI 2004/1768 (see PARA 600 et seq): see the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 5 Pt 6 para 86(2)(a)(i). As to the duty on an NHS body to ensure that such a complaints procedure is in place see PARA 600. The National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, apply in relation to England only: reg 1(2). At the date at which this volume states the law no equivalent regulations had been made in relation to Wales. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3    National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 5 Pt 6 para 86(3)(a).

4    See the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 5 Pt 6 para 86(3)(b). As to independent advocacy services see PARA 597.

5    See the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 5 Pt 6 para 91(1). As to the Commission for Healthcare Audit and Inspection see PARA 552.



6 'NHS body' means a primary care trust, (in England and Wales and Scotland) an NHS trust, an NHS foundation trust, a strategic health authority, a local health board, a health board, a health and social services board, or a health and social services trust: National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 1 Pt 6 para 91(3). As to primary care trusts see PARA 111. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to local health boards see PARA 75.

7 'Local authority' means any of the bodies listed in the Local Authority Social Services Act 1970 s 1 (see PARA 579 note 11), the Council of the Isles of Scilly, or a council constituted under the Local Government etc (Scotland) Act 1994 s 2: National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 1 Pt 6 para 91(3).

8 National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 1 Pt 6 para 91(2).

9 See the National Health Service (Personal Medical Services Agreements) Regulations 2004, SI 2004/627, Sch 1 Pt 6 para 91(4).

## **UPDATE**

### **600-615 Arrangements for the handling and consideration of complaints ... Complaints procedure in respect of arrangements to provide primary medical services**

SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309 (amended by SI 2009/1768), which combine adult social care and health complaints processes into a single set of arrangements.

### **615 Complaints procedure in respect of arrangements to provide primary medical services**

TEXT AND NOTES--SI 2004/627 Sch 5 Pt 6 para 86 substituted; para 91 amended: SI 2009/309.

NOTES 6-9--For Sch 1 Pt 6 read Sch 5 Pt 6.

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#### **616. Complaints procedure in respect of general dental services.**

A contractor under a general dental services contract<sup>1</sup> must establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the contract<sup>2</sup>. The complaints procedure must comply with the statutory requirements<sup>3</sup>. The contractor must take reasonable steps to ensure that patients are aware of the complaints procedure, the role of the primary care trust<sup>4</sup> and other bodies in relation to complaints about services under the contract, and their right to assistance with any complaint from independent advocacy services<sup>5</sup>. The contractor must take reasonable steps to ensure that the complaints procedure is accessible to all patients<sup>6</sup>. The contractor must co-operate with: (1) any investigation of a complaint in relation to any matter reasonably connected with the provision of services under the contract undertaken by the primary care trust, and the Commission for Healthcare Audit and Inspection<sup>7</sup>; and (2) any investigation of a complaint by an NHS body<sup>8</sup> or local authority<sup>9</sup> which relates to a patient or former patient of the contractor<sup>10</sup>. The co-operation required includes answering questions reasonably put to the contractor by the primary care trust, providing any information relating to the complaint reasonably required by the primary care trust, and attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the contractor's presence at the meeting is reasonably required by the primary care trust<sup>11</sup>.

1 As to general dental services contracts see PARA 278.

2 See the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, Sch 3 Pt 6 para 47(1). The National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, apply in relation to England only: reg 1(2). As to the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, and as to the equivalent regulations in relation to Wales see PARA 278 note 11.

3 See the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, Sch 3 Pt 6 para 47(1). As to the statutory requirements see Sch 3 Pt 6 paras 48-50, 52.

4 As to primary care trusts see PARA 111.

5 See the National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, Sch 3 Pt 6 para 47(2). As to independent advocacy services see PARA 597.

6 National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, Sch 3 Pt 6 para 47(3).

7 National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, Sch 3 Pt 6 para 51(1)(a). As to the Commission for Healthcare Audit and Inspection see PARA 552.

8 'NHS body' means a primary care trust, an NHS trust, an NHS foundation trust, a strategic health authority, a local health board, a health board, a health and social services board, a health and social services trust, or a health board or special health board constituted under the National Health Service (Scotland) Act 1978 s 2: National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, Sch 3 Pt 6 para 51(2). As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to strategic health authorities see PARA 94 et seq. As to local health boards see PARA 75.

9 'Local authority' means any of the bodies listed in the Local Authority Social Services Act 1970 s 1 (see PARA 579 note 11), the Council of the Isles of Scilly, or a council constituted under the Local Government etc (Scotland) Act 1994 s 2: National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, Sch 3 Pt 6 para 51(2).

10 National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, Sch 3 Pt 6 para 51(1)(b).

11 National Health Service (General Dental Services Contracts) Regulations 2005, SI 2005/3361, Sch 3 Pt 6 para 51(3).

## **UPDATE**

### **616 Complaints procedure in respect of general dental services**

TEXT AND NOTES--SI 2005/3361 Sch 3 Pt 6 paras 47, 51 amended; Pt 5A added: SI 2009/309.

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### **617. Complaints procedure in respect of general ophthalmic services.**

A contractor providing general ophthalmic services<sup>1</sup> must establish and operate a complaints procedure to deal with any complaints made by or on behalf of his patients and former patients<sup>2</sup>. A complaints procedure must comply with the statutory requirements<sup>3</sup>. A contractor must cooperate with any investigation of a complaint by the health authority<sup>4</sup> or the Commission for Healthcare, Audit and Inspection<sup>5</sup>. Such co-operation includes answering questions reasonably put to the contractor by the health authority or the Commission; providing any information relating to the complaint reasonably required by the health authority or the Commission; and attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given), if the contractor's presence at the meeting is reasonably required by the health authority or the Commission<sup>6</sup>.

Where a contractor who, being an ophthalmic medical practitioner<sup>7</sup>, also performs primary medical services under a general medical services contract<sup>8</sup> for any person<sup>9</sup> to whom he provides general ophthalmic services, the complaints procedure established and operated in accordance with the terms of that general medical services contract<sup>10</sup> applies in relation to any matter reasonably connected with his provision of general ophthalmic services as it applies as respects the provision of services under that contract<sup>11</sup>. Likewise, where a contractor, being an ophthalmic medical practitioner, also performs primary medical services under a PMS agreement<sup>12</sup> for any person to whom he provides general ophthalmic services, the complaints procedure established and operated under that agreement<sup>13</sup> applies in relation to any matter reasonably connected with his provision of general ophthalmic services as it applies as respects his provision of services under the agreement<sup>14</sup>.

1 As to general ophthalmic services see PARA 295.

2 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 8A(1) (Sch 1 paras 8A, 8B added by SI 1996/705). The complaints procedure may be such that it also deals with complaints made in relation to one or more other contractors; and, in respect of a contractor who provides general ophthalmic services from more than one set of premises, may be such that it relates to all those premises together: see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 8A(2), (3) (as so added).

3 As to the statutory requirements see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 8A(2)-(8) (as added (see note 2); reg 8A(7) amended by SI 2003/837).

4 As to health authorities see PARA 449 note 1.

5 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 8B(1) (as added (see note 2); and amended by SI 2002/2469, SI 2006/1550). As to the Commission for Healthcare Audit and Inspection see PARA 552.

6 See the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 8B(2) (as added and amended: see note 5).

7 As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3.

8 As to general medical services contracts see PARA 242.

9 As to the meaning of 'person' see PARA 17 note 2.

10 As to such complaints procedures see PARA 614.

11 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 8C(1) (Sch 1 para 8C added by SI 1996/705; and substituted in relation to England by SI 2004/865, and in relation to Wales by SI 2004/1016). Accordingly, any requirement as to co-operation with investigations of complaints by other bodies imposed under the general medical services contract also applies in relation to complaints about such matters: see Sch 1 para 8C(2) (as so added and substituted).

12 'PMS agreement' means an agreement for the provision of primary medical services made under the National Health Service Act 2006 s 92 (see PARA 267): see the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 8C(5) (as added and substituted: see note 11).

13 As to such complaints procedures see PARA 615.

14 National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 para 8C(3) (as added and substituted: see note 11). Accordingly, any requirement as to co-operation with investigations of complaints by other bodies imposed on a party to a PMS agreement also applies in relation to complaints about such matters: see Sch 1 para 8C(4) (as so added and substituted).

## **UPDATE**

### **617 Complaints procedure in respect of general ophthalmic services**

TEXT AND NOTES--SI 1986/975 revoked in relation to England: SI 2008/1700.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/ (v) Complaints/D. HEALTH SERVICE CONTRACTORS/618. Complaints procedure in respect of pharmaceutical services.

### **618. Complaints procedure in respect of pharmaceutical services.**

A pharmacist<sup>1</sup> and a supplier of appliances<sup>2</sup> must have in place arrangements for the handling and consideration of complaints about any matter connected with his provision of pharmaceutical services<sup>3</sup> which are essentially the same as those set out in the National Health Service (Complaints) Regulations 2004<sup>4</sup>.

1 As to the meaning of 'pharmacist' see PARA 345 note 3.

2 As to the meaning of 'appliance' see PARA 345 note 3.

3 As to the meaning of 'pharmaceutical services' see PARA 345 note 5.

4 National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 1 para 32, Sch 3 para 19. The National Health Service (Complaints) Regulations 2004 are the National Health Service (Complaints) Regulations 2004, SI 2004/1768, and the arrangements referred to are those of Pt 2 (regs 3-13): see PARAS 600-607.

### **UPDATE**

### **618 Complaints procedure in respect of pharmaceutical services**

NOTE 4--SI 2004/1768 revoked, and replaced in relation to England: Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, SI 2009/309, which combine adult social care and health complaints processes into a single set of arrangements. SI 2005/641 Sch 1 para 32, Sch 3 para 19 substituted: SI 2009/309.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(vi) Discipline Committees/619. Establishment of discipline committees.

## **(vi) Discipline Committees**

### **619. Establishment of discipline committees.**

Every health authority<sup>1</sup> or primary care trust<sup>2</sup> must have the following discipline committees, namely an ophthalmic discipline committee<sup>3</sup>, a pharmaceutical discipline committee<sup>4</sup>, and a joint discipline committee<sup>5</sup>; and may, where it sees fit, have two or more of any of those committees<sup>6</sup>. Three or more health authorities or primary care trusts may appoint discipline committees jointly<sup>7</sup>.

A health authority or primary care trust may have a reference committee which must include one member who is both an officer and a member of that authority or trust and which may exercise the authority's or trust's functions with respect to the referral of disciplinary matters<sup>8</sup>.

1 As to health authorities see PARA 449 note 1.

2 As to primary care trusts see PARA 111.

3 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3(1)(c) (reg 3 substituted by SI 1996/703).

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3(1)(d) (as substituted: see note 3).

5 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3(1)(e) (as substituted: see note 3).

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3(1), (2) (reg 3 as substituted (see note 3); reg 3(1) amended by SI 2002/2469). As to the constitution of discipline committees see PARA 620.

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3(3) (as substituted (see note 3); and amended by SI 2002/2469). A reference to a discipline committee of a health authority or primary care trust includes a reference to a discipline committee jointly appointed by three or more health authorities or primary care trusts: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3(3) (as so substituted and amended).

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3(4) (as substituted (see note 3); and amended by SI 2002/2469). As to the meaning of 'disciplinary matter' see PARA 623 note 3. As to the referral of disciplinary matters see PARA 623.

## **UPDATE**

## **619 Establishment of discipline committees**

TEXT AND NOTES 1-3--SI 1992/664 reg 3(1)(c) omitted in relation to England: SI 2008/1700.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(vi) Discipline Committees/620. Constitution of discipline committees.

## **620. Constitution of discipline committees.**

A discipline committee<sup>1</sup>, other than a joint discipline committee, consists of a chairman<sup>2</sup>, no more than three lay persons<sup>3</sup> appointed by the health authority or primary care trust<sup>4</sup>, and no more than three professional persons<sup>5</sup> appointed by the health authority or primary care trust from a list of nominees provided by the relevant local representative committee<sup>6</sup> for the health authority's or primary care trust's area<sup>7</sup>.

A joint discipline committee consists of a chairman<sup>8</sup>; and ten other members of whom two must be lay persons appointed by the health authority or primary care trust<sup>9</sup>, two must be pharmacists appointed by the pharmaceutical discipline committee<sup>10</sup>, and two must be ophthalmic medical practitioners or opticians appointed by the ophthalmic discipline committee<sup>11</sup>. A member of the joint discipline committee appointed by a discipline committee must not take part in an investigation by the joint discipline committee unless the matter to be investigated involves a question relating to a relevant practitioner<sup>12</sup>.

As respects each discipline committee not fewer than three lay persons and not fewer than three professional persons must be appointed as deputies, according to the same provisions as apply to the appointment of members of that committee other than the chairman<sup>13</sup>. Where a member of a discipline committee, other than the chairman, is absent a deputy appointed according to the same provisions as that member may act in his place<sup>14</sup>.

A health authority or primary care trust may make standing orders with respect to the term of office of any members and deputy members of any discipline committee<sup>15</sup>. Subject to any re-appointment, the term of office of any member or deputy member of such a committee must not exceed one year<sup>16</sup>. A chairman of a discipline committee may attend and take part in any proceedings of the appropriate health authority or primary care trust at which a report of that committee is being considered, but may not vote<sup>17</sup>. A person who is a member of a discipline committee must cease to hold office: (1) where he is the chairman or a lay member<sup>18</sup>, on his ceasing to be a lay person<sup>19</sup>; (2) where he is a member other than the chairman or a lay member, on his ceasing to be a professional person<sup>20</sup>.

1 As to discipline committees see PARA 619.

2 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 1(a). As to the chairman of a discipline committee see PARA 621.

3 'Lay person' means a person who is not and never has been: (1) a doctor, a dentist, an ophthalmic medical practitioner, an optician, or a chemist; (2) a registered dispensing optician within the meaning of the Opticians Act (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 838); (3) a registered nurse or registered midwife (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 717); nor (4) an officer of, or otherwise employed by, any health authority or primary care trust or a community health council established under the National Health Service (Wales) Act 2006 s 182 (see PARA 74): National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 8(b) (amended by SI 2002/2469; SI 2004/1771). 'Doctor' means a registered medical practitioner, other than one acting in the capacity of an ophthalmic medical practitioner: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1). As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4. As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3: definition applied by reg 2(1). 'Dentist' means a

registered dental practitioner: reg 2(1). As to the meaning of 'dental practitioner' see PARA 87 note 7. 'Optician' means (a) in the context of any provision requiring a member of a body constituted under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, to be an optician, an optometrist whose name is registered in the register of optometrists maintained under the Opticians Act 1989 s 7(a) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 838); or (b) in any other context, an optometrist whose name is registered in the register of optometrists maintained under s 7(a) or in the register of visiting optometrists from relevant European States maintained under s 8B(1)(a) (see **MEDICAL PROFESSIONS**), or a body corporate registered in the register of bodies corporate maintained under s 9 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 841) carrying on business as an optometrist: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1) (definition substituted by SI 2005/848; and amended by SI 2007/3101). As to the meaning of 'chemist' see PARA 349 note 1; definition applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1). References in the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 to a 'health authority or primary care trust' include references to a health authority which has jointly appointed a discipline committee in accordance with reg 3(3) (see PARA 619): Sch 8 para 8(d) (amended by SI 2002/2469). As to health authorities see PARA 449 note 1. As to primary care trusts see PARA 111.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 1(b) (amended by SI 2002/2469).

5 'Professional person' means: (1) in the case of a pharmaceutical discipline committee, a pharmacist; (2) in the case of an ophthalmic discipline committee, an ophthalmic medical practitioner or optician; (3) in the case of a joint discipline committee, a member appointed by a discipline committee: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 8(c) (amended by SI 2004/865; SI 2004/1016; SI 2006/562; SI 2006/946). 'Pharmacist' means a registered pharmacist: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1). As to the meaning of 'registered pharmacist' see PARA 339 note 19.

6 'Relevant local representative committee' means: (1) in relation to an ophthalmic medical practitioner or an optician, or the ophthalmic discipline committee, the local optical committee; (2) in relation to a chemist, or the pharmaceutical discipline committee, the local pharmaceutical committee, recognised in relation to the locality in question: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1) (definition amended by SI 1996/703; SI 2004/865; SI 2004/1016; SI 2006/562; SI 2006/946). Where three or more health authorities or primary care trusts have jointly appointed a discipline committee in accordance with the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3(3) (see PARA 619) references to the 'relevant local representative committee' include references to any of the relevant local representative committees for the areas of those three or more health authorities: Sch 2 para 8(e) (amended by SI 2002/2469). As to local optical committees see PARAS 327, 337. As to local pharmaceutical committees see PARA 351.

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 1(c) (amended by SI 2002/2469).

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 2(1) (a).

9 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 2(1) (b)(i) (amended by SI 2002/2469).

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 2(1)(b)(iv). A person appointed as a member of a joint discipline committee by a discipline committee under Sch 2 para 2(1)(b)(iv) or (v) (see the text to note 11) must already be a member of the discipline committee which appoints him or a deputy for such a member: Sch 2 para 2(2) (amended by SI 2006/562; SI 2006/946).

11 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 2(1)(b)(v). See also note 10.

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 2(3). For these purposes a 'relevant practitioner' is: (1) in relation to a member appointed by the ophthalmic discipline committee, an ophthalmic medical practitioner or an optician; (2) in relation to a member appointed by the pharmaceutical discipline committee, a chemist: Sch 2 para 2(4) (amended by SI 2004/865; SI 2004/1016; SI 2006/562; SI 2006/946).

13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 3(1).

14 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 3(2).

15 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 6(1) (amended by SI 2002/2469).

16 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 6(2).

17 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 6(3) (amended by SI 2002/2469).

18 'Lay member' means, in relation to a discipline committee or joint discipline committee, any member (other than the chairman) who is a lay person: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 8(a).

19 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 7(1).

20 See the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 7(2).

## **UPDATE**

### **620 Constitution of discipline committees**

NOTE 3--SI 2007/3101 amended: SI 2008/462.

NOTE 5--SI 1992/664 Sch 2 para 8(c) further amended in relation to England: SI 2008/1700.

NOTE 10--SI 1992/664 Sch 2 para 2(2) further amended in relation to England: SI 2008/1700.

TEXT AND NOTE 11--SI 1992/664 Sch 2 para 2(1)(b)(v) omitted in relation to England: SI 2008/1700.

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## **621. Chairman and deputy chairman.**

The chairman of a discipline committee<sup>1</sup> must be a solicitor or barrister appointed by the health authority or primary care trust<sup>2</sup>. The health authority or primary care trust must, within 14 days of making such an appointment, give notice in writing<sup>3</sup> of the appointment to the other members of the discipline committee<sup>4</sup>. Where, within 14 days of such notice being sent, a statement duly signed<sup>5</sup> is sent to the health authority or primary care trust asserting that the chairman appointed by the health authority or primary care trust is not acceptable to the signatories of the statement, the health authority or primary care trust must within 28 days of receipt of that statement refer the matter of the appointment to the Secretary of State<sup>6</sup>. Where the matter of the appointment is so referred to the Secretary of State, he may, after consultation<sup>7</sup> with the health authority or primary care trust and the relevant local representative committee<sup>8</sup>, appoint another person to be chairman of the discipline committee, and the chairman appointed by the health authority or primary care trust ceases immediately to hold office as chairman and member of that committee<sup>9</sup>.

A person appointed as chairman of a discipline committee who is already a member of that discipline committee ceases, on his appointment as chairman, to be a member otherwise than in his capacity as chairman and a new member must be appointed to take his place<sup>10</sup>.

A person must be appointed to act as deputy for the chairman of any discipline committee<sup>11</sup>. The deputy chairman may, in the absence of the chairman, act in his place and may, if when appointed he was already a member of the committee, continue as a member but when acting as chairman must act only in that capacity<sup>12</sup>.

1 As to discipline committees see PARA 619. As to the constitution of discipline committees see PARA 620.

2 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 4(1) (amended by SI 2002/2469). References to a 'health authority or primary care trust' include references to a health authority which has jointly appointed a discipline committee in accordance with the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3(3) (see PARA 619): Sch 2 para 8(d) (amended by SI 2002/2469). As to health authorities see PARA 449 note 1. As to primary care trusts see PARA 111.

3 As to the meaning of 'writing' see PARA 7 note 2.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 4(2) (amended by SI 2002/2469). As to the service of documents see PARA 637.

5 A statement must be signed: (1) in the case of a discipline committee other than a joint discipline committee, by a majority of its lay members, or by a majority of its other members (National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 4(4)(a)); (2) in the case of a joint discipline committee, by both of its lay members or by both of the members appointed by any one of the discipline committees (Sch 2 para 4(4)(b)). As to the meaning of 'lay member' see PARA 620 note 18.

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 4(3) (amended by SI 2002/2469). As to the Secretary of State see PARA 6 note 8.

7 As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

8 As to the meaning of 'relevant local representative committee' see PARA 620 note 6.

9 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 4(5) (amended by SI 2002/2469).

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 4(6).

11 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 5(1). The provisions of Sch 2 para 4 (see the text to notes 1-10) apply to that appointment as they apply to the appointment of the chairman: Sch 2 para 5(1).

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 2 para 5(2).

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## **622. Provisions relating to the start of disciplinary proceedings.**

Where an appropriate health authority or primary care trust<sup>1</sup> receives information which it considers could amount to an allegation that a practitioner has failed to comply with his terms of service<sup>2</sup> it must decide either to take no action or to take one or both of the following courses of action<sup>3</sup>. The courses of action are: (1) to refer the matter to another health authority or primary care trust for investigation<sup>4</sup>; (2) to refer the information to, as it considers appropriate, the relevant professional body<sup>5</sup> or the local police authority<sup>6</sup>.

Where a health authority or primary care trust considers that a payment has been made to a practitioner which was not due and the practitioner does not admit that overpayment, the health authority or primary care trust may refer<sup>7</sup> the overpayment for investigation<sup>8</sup>.

1 'Appropriate health authority or primary care trust' in relation to a practitioner is the health authority or primary care trust in whose ophthalmic or pharmaceutical list the name of the practitioner was included at the relevant time; or, where the practitioner was at that time on more than one such list, the health authority or primary care trust by arrangement with which the general ophthalmic services or pharmaceutical services giving rise to the allegation were provided: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(5) (reg 4 substituted by SI 1996/703; National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(5) amended by SI 1998/674, SI 2002/2469, SI 2004/865, SI 2004/1016, SI 2006/562, SI 2006/946). 'Relevant time' means the time of the event, treatment, or other matter giving rise to the allegation: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(8) (as so substituted). As to health authorities see PARA 449 note 1. As to primary care trusts see PARA 111. 'Practitioner' means an ophthalmic medical practitioner, optician or chemist against whom a complaint has been made or in respect of whom a matter has been referred under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(1) (see PARA 623); reg 2(1) (definition amended by SI 1996/703; SI 2006/562; SI 2006/946). As to the meaning of 'optician' see PARA 620 note 3. As to the meaning of 'chemist' see PARA 349 note 1; as to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3; as to the meaning of 'ophthalmic list' see PARA 299; as to the meaning of 'pharmaceutical list' see PARA 353: all definitions applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1). As to the meaning of 'general ophthalmic services' see PARA 295. As to the meaning of 'pharmaceutical services' see PARA 339.

'Complaint' means a complaint made in accordance with: (1) directions concerning the establishment and operation of procedures for dealing with complaints against practitioners providing general ophthalmic services or pharmaceutical services given under the National Health Service Act 2006 s 8 (see PARA 16); or (2) in accordance with, in relation to England, the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641, Sch 1 para 32 or Sch 3 para 19 (see PARA 618) or, in relation to Wales, the National Health Service (Pharmaceutical Services) Regulations 1992, SI 1992/662, Sch 2 paras 10A, 10B (see PARA 345); or (3) in accordance with the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975, Sch 1 paras 8A and 8B (see PARA 617): National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1), (4) (reg 2(1) definition substituted, 2(4) added, by SI 1996/703; National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(4) amended by SI 2004/865, SI 2004/1016, SI 2005/641, SI 2006/562, SI 2006/946); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

2 'Terms of service' means, in relation to an ophthalmic medical practitioner or an optician, those under the National Health Service (General Ophthalmic Services) Regulations 1986, SI 1986/975 (see PARA 323); and in relation to a chemist, those under the National Health Service (Pharmaceutical Services) Regulations 2005, SI 2005/641 (see PARA 347): see the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1) (definition amended by SI 2004/865; SI 2004/1016; SI 2006/562; SI 2006/946).

3 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(1) (as substituted (see note 1); and amended by SI 2002/2469).

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(2)(a) (reg 4 as substituted (see note 1); reg 4(2)(a), (3), (4)(a) amended by SI 2002/2469). The investigation referred to is that in accordance with the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(1): see PARA 623. The appropriate health authority or primary care trust must not proceed under reg 4(2)(a) in any case where the allegation and information on which it is based is the subject of a complaint which is being investigated: reg 4(3) (as so substituted and amended). An allegation remains the subject of a complaint which is being investigated until: (1) the procedure for investigating the complaint is completed by the delivery of a report of the investigation to a health authority or primary care trust by a panel appointed in accordance with directions given under the National Health Service Act 2006 s 8 (see PARA 16) (reg 4(4)(a) (as so substituted and amended); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4)); or (2) the complaint is withdrawn or abandoned by the person bringing it (National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(4)(b) (as so substituted). As to the meaning of 'person' see PARA 17 note 2.

5 'Relevant professional body' means: (1) in relation to an ophthalmic medical practitioner, the General Medical Council; (2) in relation to a dentist, the General Dental Council; (3) in relation to an optician, the General Optical Council; (4) in relation to a pharmacist, the Royal Pharmaceutical Society of Great Britain: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, regs 2(1), 37(4) (reg 2(1) definition, reg 37, added by SI 1996/703; National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(4) amended by SI 2004/865, SI 2004/1016). As to the General Medical Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 13 et seq. As to the General Dental Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 389 et seq. As to the General Optical Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 813 et seq. As to the Royal Pharmaceutical Society of Great Britain see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 881 et seq. As to the meaning of 'dentist' see PARA 620 note 3. As to the meaning of 'pharmacist' see PARA 620 note 5.

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(2)(b) (as substituted: see note 1). As to police authorities see **POLICE** vol 36(1) (2007 Reissue) PARA 139 et seq.

7 le under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(1): see PARA 623.

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(7) (as substituted (see note 1); and amended by SI 2002/2469).

## UPDATE

### 622 Provisions relating to the start of disciplinary proceedings

NOTE 1--SI 1992/664 reg 4(5) further amended in relation to England: SI 2008/1700.

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### **623. Referral to investigating discipline committee.**

Where an appropriate health authority or primary care trust<sup>1</sup> decides to refer a matter for investigation<sup>2</sup>, it must refer the matter<sup>3</sup> to another health authority or primary care trust for investigation by that health authority's or primary care trust's appropriate discipline committee<sup>4</sup>. However, the appropriate health authority or primary care trust must not refer the matter to another health authority or primary care trust which has appointed any discipline committee jointly with the appropriate health authority or primary care trust<sup>5</sup>.

A matter which is required to be investigated by two discipline committees, may instead be referred for investigation by a joint discipline committee<sup>6</sup>. If, in the opinion of a discipline committee, a matter referred to it includes allegations which are required<sup>7</sup> to be investigated also by another discipline committee, it must refer the matter to the joint discipline committee instead of dealing with the matter itself<sup>8</sup>.

Where the disciplinary matter concerns an allegation which has been the subject of a complaint<sup>9</sup> the appropriate health authority or primary care trust must refer it within 28 days of the allegation having ceased to be the subject of a complaint which is being investigated<sup>10</sup>. Where the disciplinary matter does not concern an allegation which has been the subject of a complaint the appropriate health authority or primary care trust must refer it within<sup>11</sup> 13 weeks after the event or matter which is the subject of the allegation<sup>12</sup>. Where the disciplinary matter concerns an alleged overpayment made to a practitioner<sup>13</sup> the appropriate health authority or primary care trust may refer it at any time<sup>14</sup>.

A discipline committee must investigate any matter which is referred to it<sup>15</sup>.

1 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1. As to health authorities see PARA 449 note 1. As to primary care trusts see PARA 111.

2 Ie under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(2)(a) or (7): see PARA 622.

3 A matter referred under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(1) is known as a 'disciplinary matter': see reg 2(1) (definition added by SI 1996/703).

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(1) (regs 5, 6, 7 substituted by SI 1996/703: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, regs 5(1), (2), 6(1), (2), 7(3) amended by SI 2002/2469). The 'appropriate discipline committee' is, where the matter relates to an ophthalmic medical practitioner or optician, an ophthalmic discipline committee; and where the matter relates to a chemist, a pharmaceutical discipline committee: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(3)(c), (d) (as so substituted). Where a matter is referred for investigation by a joint discipline committee under reg 5(4) or (5) (see the text to notes 6-8), that committee is the 'appropriate discipline committee' instead of any other committee: reg 5(6) (as so substituted). As to discipline committees see PARA 619. As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3; and as to the meaning of 'chemist' see PARA 349 note 1: definitions applied by reg 2(1).



5 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(2) (as substituted and amended: see note 4).

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(4) (as substituted: see note 4).

7 Ie by virtue of the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(1): see the text to notes 1-4.

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(5) (as substituted: see note 4).

9 As to the meaning of 'complaint' see PARA 622 note 1.

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 6(1) (as substituted and amended: see note 4).

11 See the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 6(2) (as substituted and amended: see note 4).

12 See the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 6(3)(a) (as substituted (see note 4); and amended by SI 2004/865, SI 2004/1016).

13 Ie pursuant to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 4(7): see PARA 622.

14 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 7(3) (as substituted and amended: see note 4).

15 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 7(1) (as substituted: see note 4). As to the procedure for investigations see PARAS 624-629.

## **UPDATE**

### **623 Provisions relating to the start of disciplinary proceedings**

NOTE 4--SI 1992/664 reg 5(3)(c) omitted in relation to England: SI 2008/1700.

TEXT AND NOTE 12--SI 1992/664 reg 6(3)(a) further amended in relation to England: SI 2008/1700.

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#### **624. Statement of case and response.**

Where a disciplinary matter<sup>1</sup> is referred to the appropriate discipline committee<sup>2</sup> the appropriate health authority or primary care trust<sup>3</sup> must<sup>4</sup>: (1) send notice of the referral to the practitioner<sup>5</sup> who is the subject of the matter within two working days of the referral<sup>6</sup>; (2) send a statement of case to the discipline committee and the practitioner within 28 days of the referral<sup>7</sup>; (3) where the matter relates to a deputy<sup>8</sup> send any notice required<sup>9</sup> within two working days of the referral<sup>10</sup>. The statement of case must include: (a) details of each provision of the practitioner's terms of service<sup>11</sup> with which it is alleged he has failed to comply specifying for each of those provisions the details of the alleged failure to comply<sup>12</sup>; (b) copies of all relevant documentary evidence<sup>13</sup>; (c) the name and address of any witness the appropriate health authority or primary care trust intends will give evidence at a hearing before the discipline committee and a copy of any statement made by any such witness<sup>14</sup>.

Where the practitioner wishes to respond to the statement of case he must send to the appropriate health authority or primary care trust and the discipline committee his response to the statement of case within 28 days of the date on which the statement of case was sent to him<sup>15</sup>.

1 As to the meaning of 'disciplinary matter' see PARA 623 note 3.

2 In accordance with the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(1): see PARA 623. As to discipline committees see PARA 619.

3 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(1) (Sch 4 substituted by SI 1996/703; National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 paras 1(1), (2)(c), (3), (4), 3(1) amended by SI 2002/2469).

5 As to the meaning of 'practitioner' see PARA 622 note 1.

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(1) (a) (as substituted: see note 4). As to the service of documents see PARA 637.

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(1) (b) (as substituted: see note 4). This provision is expressed to be subject to Sch 4 para 1(3): see note 13. Where the appropriate health authority or primary care trust requests an extension of the 28 day period before it expires, the chairman of the discipline committee may grant an extension of that period for a further 28 days from the day on which the period would otherwise expire: Sch 4 para 1(4) (as substituted and amended: see note 4). As to the chairman see PARA 621.

8    le where the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(1) applies: see PARA 625.

9    le under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(1): see PARA 625.

10   National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(1)(c) (as substituted: see note 4).

11   As to the meaning of 'terms of service' see PARA 622 note 2.

12   National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(2)(a) (as substituted: see note 4).

13   National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(2)(b) (as substituted: see note 4). The appropriate health authority or primary care trust must not in its statement of case, include or refer to copies of documents which were created for the purposes of a complaint unless such documents concern evidence brought into issue by the practitioner: Sch 4 para 1(3) (as substituted and amended: see note 4). As to the meaning of 'complaint' see PARA 622 note 1.

14   National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(2)(c) (as substituted and amended: see note 4).

15   National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 3(1) (as substituted and amended: see note 4). Where the practitioner requests an extension of the 28 day period before it expires, the chairman of the discipline committee may grant an extension of that period for a further 28 days from the day on which the period would otherwise expire: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 3(2) (as substituted: see note 4).

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## **625. Disciplinary matters in relation to employed pharmacists.**

Where a disciplinary matter<sup>1</sup> which is investigated in relation to a chemist<sup>2</sup> concerns the conduct of a pharmacist<sup>3</sup> employed by him<sup>4</sup>, the appropriate health authority or primary care trust<sup>5</sup> must send a notice in writing<sup>6</sup> to the employed pharmacist<sup>7</sup>. The notice must: (1) invite the recipient of the notice to send to the appropriate health authority or primary care trust within 28 days of that notice being sent to him if he wishes to be treated as a party to the investigation<sup>8</sup>, written notification of his wish<sup>9</sup> and his written comments on the disciplinary matter<sup>10</sup>; (2) include details of each provision of the terms of service<sup>11</sup> with which it is alleged there has been a failure to comply<sup>12</sup> and a copy of the appropriate health authority's or primary care trust's statement of case<sup>13</sup>, or notification of the date by which<sup>14</sup> the statement of case is due<sup>15</sup>; (3) inform the recipient of the notice that copies of any comments or other documents he may submit in connection with the investigation will be sent to the practitioner<sup>16</sup> and may be produced at any hearing<sup>17</sup>.

Where the recipient of such a notice informs the appropriate health authority or primary care trust that he wishes to be treated as a party to the investigation and submits comments, he must be treated<sup>18</sup> as if he were a practitioner in relation to whom the allegation, the subject of the disciplinary matter, is made, and the statutory provisions relating to investigations<sup>19</sup> apply to him accordingly<sup>20</sup>.

1 As to the meaning of 'disciplinary matter' see PARA 623 note 3.

2 As to the meaning of 'chemist' see PARA 349 note 1: definition applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1).

3 As to the meaning of 'pharmacist' see PARA 620 note 5.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(1) (c) (Sch 4 substituted by SI 1996/703).

5 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1.

6 As to the meaning of 'writing' see PARA 7 note 2. As to the service of documents see PARA 637.

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(1) (as substituted (see note 4); and amended by SI 2002/2469).

8 I.e. notwithstanding that no action may be taken in relation to him under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8: see PARA 631.

9 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(2)(a)(i) (as substituted (see note 4); and amended by SI 2002/2469).

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(2)(a)(ii) (as substituted (see note 4); and amended by SI 2002/2469).

11 He identified pursuant to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(2)(a): see PARA 624. As to the meaning of 'terms of service' see PARA 622 note 2.

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(2)(b) (as substituted: see note 4).

13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(2)(b)(i) (as substituted (see note 4); and amended by SI 2002/2469). As to the statement of case see PARA 624.

14 He under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(1)(b) or, where an extension has been granted, under Sch 4 para 1(4): see PARA 624.

15 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(2)(b)(ii) (as substituted: see note 4).

16 As to the meaning of 'practitioner' see PARA 622 note 1.

17 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(2)(c) (as substituted: see note 4). As to the hearing see PARA 628.

18 He though no action may be taken in relation to him under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8: see PARA 631.

19 He the provisions of the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 paras 3-8: see PARAS 624, 626-629.

20 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(3) (as substituted (see note 4); and amended by SI 2002/2469).

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## **626. Preparation for the hearing.**

The health authority<sup>1</sup> or primary care trust<sup>2</sup> which has appointed the discipline committee<sup>3</sup> must in writing<sup>4</sup>: (1) inform the parties<sup>5</sup> that there will be a hearing<sup>6</sup>, and of the names of the members and deputy members of the discipline committee<sup>7</sup>; (2) send to the parties copies of any further correspondence relevant to the disciplinary matter<sup>8</sup>; and (3) request in writing each party to forward to the investigating committee within 14 days from the date of the request, copies of any documentary evidence, and of the names of any witnesses, which that party proposes to produce or call at the hearing<sup>9</sup>.

The health authority or primary care trust which has appointed the discipline committee must give to the parties and the secretary of the relevant local representative committee<sup>10</sup> of the appropriate health authority or primary care trust, not less than 21 days' notice in writing of the date, time and place of the hearing and must include with the notice to each party<sup>11</sup>: (a) a copy of any documents supplied under head (3) above by the other party<sup>12</sup>; (b) a request to that party to notify the discipline committee in writing whether or not he intends to attend the hearing<sup>13</sup>.

The chairman<sup>14</sup> of the discipline committee may, upon the application of any party, postpone the hearing if he is satisfied that the attendance of the party or any witness on the date fixed for the hearing is not reasonably practicable, or for any other reason he thinks fit<sup>15</sup>.

The health authority or primary care trust which has appointed the discipline committee must, not less than seven days before the date fixed for the hearing, supply<sup>16</sup> to each member of the discipline committee<sup>17</sup>, and to the relevant local representative committee for the area of the appropriate health authority or primary care trust<sup>18</sup>, copies of the appropriate health authority's or primary care trust's statement of case, of any response of the practitioner<sup>19</sup>, of any comments made by an employed pharmacist<sup>20</sup>, and of any further observations or correspondence between the parties<sup>21</sup>.

1 As to health authorities see PARA 449 note 1.

2 As to primary care trusts see PARA 111.

3 As to discipline committees see PARA 619. As to the investigating discipline committee see PARA 623.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(1) (Sch 4 substituted by SI 1996/703; National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(1) amended by SI 2002/2469). As to the meaning of 'writing' see PARA 7 note 2. As to the service of documents see PARA 637.

5 'Parties' means the practitioner, the appropriate health authority or primary care trust and any person treated as a party pursuant to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(3) (see PARA 625); Sch 4 para 9(d) (amended by SI 2002/2469). As to the meanings of 'practitioner' and 'appropriate health authority or primary care trust' see PARA 622 note 1.

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(1)(a)(i) (as substituted: see note 4). As to attendance at a hearing see PARA 627. As to procedure at a hearing see PARA 628.

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(1)(a)(ii) (as substituted: see note 4). As to the constitution of discipline committees see PARA 620.

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(1)(b) (as substituted: see note 4). As to the meaning of 'disciplinary matter' see PARA 623 note 3.

9 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(1)(c) (as substituted: see note 4).

10 As to the meaning of 'relevant local representative committee' see PARA 620 note 6.

11 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(2) (as substituted (see note 4); and amended by SI 2002/2469).

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(2)(a) (as substituted: see note 4).

13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(2)(b) (as substituted: see note 4).

14 As to the chairman see PARA 621.

15 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(3) (as substituted: see note 4). The provisions of Sch 4 para 4(2) (see the text to notes 10-13) apply as respects the postponed hearing: Sch 4 para 4(3).

16 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(4) (as substituted (see note 4); and amended by SI 2002/2469).

17 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(4)(a) (as substituted: see note 4).

18 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(4)(b) (as substituted (see note 4); and amended by SI 2002/2469).

19 As to the statement of case and response see PARA 624.

20 Ie under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(2)(a)(ii): see PARA 625.

21 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(4) (as substituted: see note 4).



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## **627. Attendance at hearing.**

The hearing before the discipline committee<sup>1</sup> must be in private, and no person must be admitted to it unless he is a specified person<sup>2</sup>. The specified persons are: (1) no more than one member or officer of the appropriate health authority or primary care trust<sup>3</sup> and the practitioner<sup>4</sup>; (2) any person permitted<sup>5</sup> to accompany a party<sup>6</sup>; (3) not more than one person who is a member or officer of the relevant local representative committee<sup>7</sup> for the area of the appropriate health authority or primary care trust and who is authorised by that committee to attend the hearing on its behalf as an observer only<sup>8</sup>; (4) any person whose attendance is required for the purpose of giving evidence to the discipline committee<sup>9</sup>; (5) not more than two officers of the health authority or primary care trust which has appointed the discipline committee, who have been authorised by that health authority or primary care trust to attend for the purpose of assisting the discipline committee in the discharge of its functions<sup>10</sup>; (6) where the parties all consent, and the discipline committee considers it appropriate, any other person<sup>11</sup>.

A party may be accompanied at the hearing by one other person who may assist him in the presentation of his case, but, if that other person is a barrister or solicitor, he may not address the committee or put questions to witnesses<sup>12</sup>. However, no officer or member of any health authority or primary care trust or of any of its discipline committees is permitted to accompany the practitioner<sup>13</sup>.

1 As to discipline committees see PARA 619. As to preparation for a hearing see PARA 626. As to procedure at a hearing see PARA 628.

2 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(1) (Sch 4 substituted by SI 1996/703). This provision is expressed to be subject to the provisions of reg 33: see PARA 638.

3 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(2) (a) (as substituted (see note 2); and amended by SI 2002/2469). This provision is expressed to be subject to Sch 4 para 5(3): see the text to note 12. As to the meaning of 'practitioner' see PARA 622 note 1.

5 Ie under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(3): see the text to note 12.

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(2) (b) (as substituted: see note 2). As to the meaning of 'parties' see PARA 626 note 5.

7 As to the meaning of 'relevant local representative committee' see PARA 620 note 6.

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(2) (c) (as substituted (see note 2); and amended by SI 2002/2469).

9 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(2) (d) (as substituted: see note 2). Any person permitted to attend the hearing for the purpose of giving evidence must, unless the discipline committee otherwise directs, be excluded from the hearing except while he is actually giving evidence: Sch 4 para 5(5) (as so substituted).

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(2)(e) (as substituted (see note 2); and amended by SI 2002/2469).

11 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(2)(f) (as substituted: see note 2).

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(3) (as substituted: see note 2).

13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(4) (as substituted (see note 2); and amended by SI 2002/2469).

## **UPDATE**

### **627 Attendance at hearing**

NOTE 2--SI 1992/664 Sch 4 para 5(1) amended: SI 2008/2683.

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## **628. Procedure at the hearing.**

At the hearing before the discipline committee<sup>1</sup>, the member or officer of the appropriate health authority or primary care trust<sup>2</sup>, the practitioner<sup>3</sup>, and any person permitted to accompany a party<sup>4</sup>, may<sup>5</sup> address the committee<sup>6</sup>, and put questions to witnesses, either directly or, where the chairman<sup>7</sup> of the committee so directs, through him<sup>8</sup>.

Where any person to whom notice of the hearing has been given<sup>9</sup> fails to attend the hearing, either in person or by a representative, the discipline committee may, having regard to the circumstances of which it is aware, proceed with the hearing notwithstanding that person's absence<sup>10</sup>. However, if a party fails to appear at the hearing, and the discipline committee is satisfied that his absence is due to illness or other reasonable cause, or if for any other reason the committee thinks fit, it may, after considering the observations of any party who is present, adjourn the hearing<sup>11</sup>.

Prior to the commencement of a hearing, the chairman must ask the other members of the discipline committee<sup>12</sup> whether any of them is interested in a question referred to them, either directly or through association with a party, and if, in the opinion of the chairman, any member is so interested, that member must take no part in the hearing, but a deputy appointed in the like manner may act in his place<sup>13</sup>.

Where, in the course of a hearing, any issue arises in relation to an event or matter which, in the opinion of the chairman: (1) is pertinent to the disciplinary matter<sup>14</sup> but was not sufficiently disclosed to the practitioner prior to the hearing, the chairman may direct that the issue is to be excluded from the investigation<sup>15</sup>; (2) is not pertinent to the disciplinary matter the issue must be excluded from the investigation<sup>16</sup>. Where no direction is made under head (1) above in relation to an issue to which that provision applies, the hearing must be adjourned unless the practitioner and the chairman agree that the hearing may proceed<sup>17</sup>. Any issue to which head (1) or (2) above applies which concerns an allegation of a failure to comply with a term of service<sup>18</sup> other than the terms of service detailed in the appropriate health authority's or primary care trust's statement of case<sup>19</sup> must be excluded from the investigation to the extent that it concerns such an allegation<sup>20</sup>. No evidence relating to an alleged breach of the practitioner's terms of service which was not specified in the appropriate health authority's or primary care trust's statement of case<sup>21</sup> may be produced at the hearing<sup>22</sup>. No documentary evidence which was prepared for the purpose of a complaint<sup>23</sup> may be produced by the appropriate health authority or primary care trust unless it concerns evidence brought into issue by the practitioner<sup>24</sup>.

Subject to the above provisions and the other provisions of the National Health Service (Service Committees and Tribunal) Regulations 1992<sup>25</sup>, the procedure at the hearing is such as the investigating discipline committee may determine<sup>26</sup>.

1 As to discipline committees see PARA 619. As to the investigating discipline committee see PARA 623. As to quorum and other matters see PARA 629. As to preparation for a hearing see PARA 626. As to attendance at a hearing see PARA 627.

2 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1.

- 3 As to the meaning of 'practitioner' see PARA 622 note 1.
- 4 As to the meaning of 'parties' see PARA 626 note 5.
- 5 Is subject to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 5(3): see PARA 627.
- 6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(1) (a) (Sch 4 substituted by SI 1996/703).
- 7 As to the chairman see PARA 621.
- 8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(1) (b) (as substituted: see note 6).
- 9 Is under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 4(2): see PARA 626.
- 10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(3) (as substituted: see note 6).
- 11 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(2) (as substituted: see note 6). In such a case the provisions of Sch 4 para 4(2) (see PARA 626) apply as respects the resumed hearing: Sch 4 para 6(2) (as so substituted).
- 12 As to the constitution of discipline committees see PARA 620.
- 13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(4) (as substituted: see note 6). As to deputies see PARA 620.
- 14 As to the meaning of 'disciplinary matter' see PARA 623 note 3.
- 15 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(5)(a) (as substituted: see note 6).
- 16 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(5)(b) (as substituted: see note 6).
- 17 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(6) (as substituted: see note 6). This provision is expressed to be subject to Sch 4 para 6(7): see the text to notes 18-20. Before being invited to give his agreement for these purposes, a practitioner who is not accompanied by a person mentioned in Sch 4 para 5(2)(b) (see PARA 627) must be afforded an opportunity to consult any person who may be present at the hearing pursuant to Sch 4 para 5(2)(c) (see PARA 627): Sch 4 para 6(8) (as so substituted).

18 As to the meaning of 'terms of service' see PARA 622 note 2.

19 As to the statement of case see PARA 624.

20 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(7) (as substituted (see note 6); and amended by SI 2002/2469).

21 Ie in accordance with the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 1(2)(a): see PARA 624.

22 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(9) (as substituted (see note 6); and amended by SI 2002/2469).

23 As to the meaning of 'complaint' see PARA 622 note 1.

24 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(10) (as substituted (see note 6); and amended by SI 2002/2469).

25 Ie the provisions of the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4.

26 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 6(11) (as substituted: see note 6).

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## **629. Provisions as to quorum, composition and voting at a hearing.**

At any hearing of a discipline committee<sup>1</sup> other than a joint discipline committee the quorum must consist of a chairman<sup>2</sup>, two lay members<sup>3</sup> and two members who are professional persons<sup>4</sup>. At any hearing of a joint discipline committee, the quorum must consist of the chairman, two lay members, and two other members<sup>5</sup> who are professional persons<sup>6</sup> and in relation to one of whom, one of the practitioners is a relevant practitioner<sup>7</sup>, and the other of whom, the other of the practitioners is a relevant practitioner<sup>8</sup>. The proceedings at any meeting of a discipline committee must be suspended if, and for so long as the number of members present falls below the quorum specified above<sup>9</sup>, or the number of lay members who are present exceeds, or is exceeded by, the number of other members (apart from the chairman) who are present<sup>10</sup>.

Where, after the commencement of a hearing before a discipline committee, the hearing is adjourned for the purposes of hearing further evidence or for preparing or considering the report<sup>11</sup>, no member of the committee who was not present at the earlier sitting of the hearing may be present at the proceedings at the resumed hearing<sup>12</sup>. Where there is an equality of votes among members of a discipline committee, the chairman has a casting vote, but is not otherwise entitled to vote<sup>13</sup>.

1 As to discipline committees see PARA 619. As to the investigating discipline committees see PARA 623. As to preparation for a hearing see PARA 626. As to attendance at a hearing see PARA 627. As to procedure at a hearing see PARA 628.

2 As to the chairman see PARA 621.

3 As to the meaning of 'lay member' see PARA 620 note 18: definition applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 9(a). As to the membership of discipline committees see PARA 620.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 8(1) (Sch 4 substituted by SI 1996/703). As to the meaning of 'professional person' see PARA 620 note 5: definition applied by Sch 4 para 9(a) (as so substituted).

5 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 8(2) (as substituted: see note 4).

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 8(2) (a) (as substituted: see note 4).

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 8(2) (b)(i) (as substituted: see note 4). 'Relevant practitioner' means where the practitioner is: (1) an optician or ophthalmic medical practitioner, an ophthalmic medical practitioner or optician; (2) a pharmacist, a pharmacist:

Sch 4 para 9(b) (as so substituted; and amended by SI 2004/865; SI 2004/1016; SI 2006/562; SI 2006/946). As to the meaning of 'practitioner' see PARA 622 note 1. As to the meaning of 'optician' see PARA 620 note 3. As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3: definition applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1). As to the meaning of 'pharmacist' see PARA 620 note 5.

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 8(2)(b)(ii) (as substituted: see note 4).

9 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 8(3)(a) (as substituted: see note 4).

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 8(3)(b) (as substituted: see note 4).

11 As to the report see PARA 630.

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 8(4) (as substituted: see note 4).

13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 8(5) (as substituted: see note 4).

## **UPDATE**

### **629 Provisions as to quorum, composition and voting at a hearing**

NOTE 7--SI 1992/664 Sch 4 para 9(b) further amended in relation to England: SI 2008/1700.

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### **630. The committee's report.**

The discipline committee<sup>1</sup> must present to the appropriate health authority or primary care trust<sup>2</sup> a report in writing<sup>3</sup> which must contain<sup>4</sup>: (1) details of the material evidence given to it<sup>5</sup>; (2) its findings on all relevant questions of fact<sup>6</sup>; (3) the inferences which, in the view of the discipline committee, may properly be drawn from such findings of fact as to whether or not the practitioner<sup>7</sup> has failed to comply with his terms of service<sup>8</sup>; (4) its reasons for drawing such inference<sup>9</sup>; and (5) its recommendations as to the action which should be taken by the appropriate health authority or primary care trust<sup>10</sup>. In making such recommendations the discipline committee must not take into account any findings of any discipline committee<sup>11</sup> that the practitioner has failed to comply with his terms of service on other occasions<sup>12</sup>.

1 As to discipline committees see PARA 619. As to the investigating discipline committee see PARA 623. As to quorum and other matters see PARA 629. As to preparation for a hearing of a discipline committee see PARA 626. As to attendance at a hearing see PARA 627. As to procedure at a hearing see PARA 628.

2 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1.

3 As to the meaning of 'writing' see PARA 7 note 2.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(1) (Sch 4 substituted by SI 1996/703; National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(1) amended by SI 2002/2469).

5 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(1) (a) (as substituted: see note 4).

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(1) (b) (as substituted: see note 4).

7 As to the meaning of 'practitioner' see PARA 622 note 1.

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(1) (c) (as substituted: see note 4). As to the meaning of 'terms of service' see PARA 622 note 2.

9 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(1) (d) (as substituted: see note 4).

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(1)(e) (as substituted (see note 4); and amended by SI 2002/2469).



11 'Any discipline committee' includes any service committee which investigated a complaint under the provisions the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Pt II (regs 3-20) as they were in force before 1 April 1996: Sch 4 para 7(3) (as substituted: see note 4).

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(2) (as substituted: see note 4).

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### **631. Determination.**

The appropriate health authority or primary care trust<sup>1</sup>, after due consideration of a report presented to it<sup>2</sup> by the discipline committee<sup>3</sup>, must: (1) accept as conclusive the findings of fact made by that committee<sup>4</sup>; (2) accept as conclusive the inferences from those findings of fact which that committee considered could properly be drawn from those findings as to whether the practitioner<sup>5</sup> has failed to comply with any of the terms of service<sup>6</sup> detailed in the appropriate health authority's or primary care trust's statement of case<sup>7</sup>; (3) determine, having regard to any recommendation made by the discipline committee either that no further action should be taken in relation to the report<sup>8</sup>, or that action should be taken in relation to the practitioner<sup>9</sup>. If the appropriate health authority or primary care trust decides either not to adopt the recommendation of the discipline committee, or to take any action not recommended by that committee, it must record in writing<sup>10</sup> its reasons for that decision<sup>11</sup>.

Where it has been determined that a practitioner to whom the report of the discipline committee relates has failed to comply with any of his terms of service the appropriate health authority or primary care trust may<sup>12</sup>: (a) determine that an amount be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise<sup>13</sup>; (b) determine that the practitioner should be warned to comply more closely with his terms of service in future<sup>14</sup>.

The appropriate health authority or primary care trust must give notice in writing of its determination<sup>15</sup> to the practitioner, any person who is treated as a party<sup>16</sup>, the discipline committee, and the Secretary of State<sup>17</sup>. Where an appropriate health authority or primary care trust determines that action should be taken in accordance with head (a) or (b) above that action must be taken by the appropriate health authority or primary care trust except that where, at the time when such action falls to be taken, the practitioner's name is no longer included in that health authority's or primary care trust's list but is included in the list of some other health authority or primary care trust, that action must be taken by that other health authority or primary care trust<sup>18</sup>. Where the appropriate health authority or primary care trust makes a determination under head (a) or (b) above no action must be taken in consequence of that determination<sup>19</sup>: (i) if no appeal is brought, before the end of the period specified<sup>20</sup> for bringing an appeal<sup>21</sup>; or (ii) if an appeal is brought, before it has received notice that the appeal has been withdrawn<sup>22</sup>, or of the Secretary of State's determination of the appeal<sup>23</sup>.

1 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1.

2 Ie pursuant to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(1): see PARA 630.

3 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1) (reg 8 substituted by SI 1996/703; National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1) amended by SI 2002/2469). As to discipline committees see PARA 619.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1)(a) (as substituted: see note 3).

5 As to the meaning of 'practitioner' see PARA 622 note 1.

6 As to the meaning of 'terms of service' see PARA 622 note 2.

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1)(b) (as substituted and amended: see note 3). As to the statement of case see PARA 624.

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1)(c)(i) (as substituted: see note 3).

9 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1)(c)(ii) (as substituted: see note 3). Such action must be in accordance with any one or more of the provisions of reg 8(5) (see the text to notes 12-14): reg 8(1)(c)(ii) (as so substituted). As to the power of the appropriate health authority or primary care trust to refer matters arising from a report to a professional regulatory body see PARA 640.

10 As to the meaning of 'writing' see PARA 7 note 2.

11 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(2) (as substituted (see note 3); and amended by SI 2002/2469).

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(5) (as substituted (see note 3); and amended by SI 2002/2469). In taking such action the appropriate health authority or primary care trust may take into consideration any determination made by any Family Health Services Appeal Authority before 1 April 1996 under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, as they were in force prior to that date, or any determination, finding or inference under reg 8(1) (see the text to notes 1-9) since 1 April 1996, so long as such a determination, finding or inference has not been overturned on appeal and was not made more than six years prior to the date of the referral under reg 5(1) (see PARA 623), that the practitioner had, on some other occasion, failed to comply with his terms of service: reg 8(6) (as so substituted and amended). As to the Family Health Services Appeal Authority see PARA 443.

13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(5)(a) (as substituted: see note 3). Any amount so determined as being recoverable is, to the extent that it is not recovered from the practitioner's remuneration, a debt owed by the practitioner to the health authority or primary care trust by which it is recoverable: reg 8(10) (as so substituted; and amended by SI 2002/2469).

14 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(5)(c) (as substituted: see note 3).

15 In its determination under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1) (see the text to notes 1-9) and any determination under reg 8(5) (see the text to notes 12-14). As to the service of documents see PARA 637.

16 In pursuant to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 2(3): see PARA 625.

17 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(7) (as substituted (see note 3); and amended by SI 2002/2469). There must be included with the notice a copy of the report of the discipline committee, a statement of any reasons recorded by the health authority or primary care trust under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(2) (see the text to notes 10-11), and a statement as to the rights of appeal to the Secretary of State under reg 9 (see PARA 632); reg 8(7) (as so substituted and amended). As to the Secretary of State see PARA 6 note 8. As to the power of the Secretary of State to refer matters arising from a determination to a professional regulatory body see PARA 640.

18 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(8) (as substituted (see note 3); and amended by SI 2002/2469, SI 2004/865, SI 2004/1016, SI 2006/562, SI 2006/946).

19 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(11) (as substituted (see note 3); and amended by SI 2002/2469, SI 2006/562, SI 2006/946).

20 le in the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(2): see PARA 632.

21 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(11)(a) (as substituted: see note 3).

22 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(11)(b)(i) (as substituted: see note 3).

23 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(11)(b)(ii) (as substituted: see note 3).

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### **632. Appeal to the Secretary of State.**

An appeal may be made to the Secretary of State<sup>1</sup> by a practitioner<sup>2</sup>: (1) against a finding of fact, or an inference drawn from a finding of fact<sup>3</sup> which (in either case) is adverse to him<sup>4</sup>; (2) against any determination<sup>5</sup> by a health authority<sup>6</sup> or primary care trust<sup>7</sup> to take action<sup>8</sup> against him<sup>9</sup>; (3) in respect of a determination by a health authority or primary care trust that an overpayment has or has not been made in respect of his remuneration<sup>10</sup>, by giving notice of appeal<sup>11</sup>.

On an appeal to which head (1) or (3) above applies, the Secretary of State must consider the appeal on the basis of such evidence as was available to the discipline committee<sup>12</sup> and of such further evidence as has been adduced on the appeal, and must<sup>13</sup>:

- 411 (a) make such findings of fact as he sees fit<sup>14</sup>; and
- 412 (b) draw such inferences from those findings as he sees fit<sup>15</sup>; and
- 413 (c) in the case of an appeal to which head (1) applies (i) determine whether or not the practitioner has failed to comply with any one or more of the terms of service<sup>16</sup> detailed in the appropriate health authority's or primary care trust's statement of case<sup>17</sup>; and (ii) determine<sup>18</sup> whether any, and if so what, action should be taken in relation to that practitioner<sup>19</sup>; or
- 414 (d) in the case of an appeal to which head (3) applies, determine whether there has been an overpayment and, if so, of what amount<sup>20</sup>.

On an appeal to which head (2) above alone applies, the Secretary of State must: (A) accept as conclusive those findings of fact made by the discipline committee which were necessary for the purpose of the health authority's or primary care trust's determination<sup>21</sup>, and the inferences specified<sup>22</sup> in the discipline committee's report<sup>23</sup>; (B) determine<sup>24</sup> whether any, and if so what, action should be taken in relation to the practitioner<sup>25</sup>.

The practitioner may withdraw his appeal, at any time before it is determined by giving written notice to the Secretary of State of his intention to do so<sup>26</sup>, and with the consent of the Secretary of State<sup>27</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the procedure on appeal see PARA 633.

2 As to the meaning of 'practitioner' see PARA 622 note 1.

3 Ie pursuant to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1)(a) or (b): see PARA 631.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(1)(a) (reg 9 substituted by SI 1996/703).

5 le under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1)(c)(ii): see PARA 631.

6 As to health authorities see PARA 449 note 1.

7 As to primary care trusts see PARA 111.

8 le in accordance with any one or more of the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(5)(a) and (c): see PARA 631.

9 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(1)(b) (as substituted (see note 4); and amended by SI 2002/2469).

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(1)(c) (as substituted (see note 4); and amended by SI 2002/2469).

11 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(1) (as substituted: see note 4). A notice of an appeal must be in writing and sent to the Secretary of State within 30 days beginning on the date on which notice of the appropriate health authority's or primary care trust's decision was given to the practitioner under reg 8(7) (see PARA 631), and must contain a concise statement of the grounds of appeal upon which the practitioner intends to rely in respect of each ground of appeal: reg 9(2) (as so substituted; and amended by SI 2002/2469). As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1. As to the service of documents see PARA 637.

12 As to discipline committees see PARA 619. As to hearings before a discipline committee see PARA 628. As to a discipline committee's report see PARA 630.

13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(3) (as substituted: see note 4). This provision is expressed to be subject to reg 9(6): see the text to notes 26-27.

14 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(3)(a) (as substituted: see note 4).

15 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(3)(b) (as substituted: see note 4).

16 As to the meaning of 'terms of service' see PARA 622 note 2.

17 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(3)(c)(i) (as substituted (see note 4); and amended by SI 2002/2469). As to the statement of case see PARA 624. As to the power of the Secretary of State to refer matters arising from his determinations under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9 to a professional regulatory body see PARA 640.

18 le in accordance with any one or more of the following provisions that is, the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(5)(a) and (c) (see PARA 631) (as

modified in accordance with reg 9(5): see note 19) or reg 11 (see PARA 634): reg 9(3)(c)(ii) (as substituted (see note 4); and amended by SI 2004/865; SI 2004/1016; SI 2006/562; SI 2006/946).

19 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(3)(c)(ii) (as substituted: see note 4). For these purposes reg 8(5)(a), (c), (6) (see PARA 631) has effect as if for any reference to 'the appropriate health authority or primary care trust' there were substituted a reference to 'the Secretary of State': reg 9(5) (as so substituted; and amended by SI 2002/2469; SI 2004/865; SI 2004/1016; SI 2006/562; SI 2006/946).

20 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(3)(d) (as substituted: see note 4). As to the recovery of amounts from practitioners following appeal see PARA 634.

21 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(4)(a)(i) (as substituted (see note 4); and amended by SI 2002/2469). The determination referred to is that under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(1)(c)(ii): see PARA 631.

22 Ie pursuant to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, Sch 4 para 7(1)(c): see PARA 630.

23 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(4)(a)(ii) (as substituted: see note 4).

24 Ie in accordance with any one or more of the following provisions, that is the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(5)(a) and (c) (see PARA 631) (as modified in accordance with 9(5): see note 25), or reg 11 (see PARA 634): reg 9(4)(b) (as substituted (see note 4); and amended by SI 2004/865, SI 2004/1016, SI 2006/562, SI 2006/946).

25 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(4)(b) (as substituted: see note 4). For these purposes reg 8(5)(a), (c), (6) (see PARA 631) has effect as if for any reference to 'the appropriate health authority or primary care trust' there were substituted a reference to 'the Secretary of State': reg 9(5) (as so substituted; and amended by SI 2002/2469; SI 2004/865; SI 2004/1016; SI 2006/562; SI 2006/946).

26 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(6)(a) (as substituted: see note 4).

27 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(6)(b) (as substituted: see note 4).

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### **633. Procedure on appeal.**

If the Secretary of State<sup>1</sup>, after considering a notice of appeal<sup>2</sup> and any further particulars furnished by the practitioner<sup>3</sup>, is of the opinion that the notice and particulars disclose no reasonable grounds of appeal or that the appeal is otherwise vexatious or frivolous, he may determine the appeal by dismissing it forthwith<sup>4</sup>. The Secretary of State must, unless he so dismisses the appeal, send a copy of the notice of appeal and of any further particulars furnished by the practitioner to the appropriate health authority or primary care trust<sup>5</sup>, and invite that authority or trust to submit its observations on the appeal within 28 days of being sent the copy of the notice of appeal<sup>6</sup>. Where such observations are made, the Secretary of State must send a copy of those observations to the practitioner and invite him to submit his comments on the observations within 21 days of his being sent that copy<sup>7</sup>.

The Secretary of State must hold an oral hearing to determine the appeal<sup>8</sup>. Where there is to be an oral hearing the Secretary of State must appoint three persons to hear the appeal<sup>9</sup>, of whom: (1) one must be a barrister or a solicitor and must act as chairman<sup>10</sup>; and (2) two must be<sup>11</sup> (a) where the practitioner is an ophthalmic medical practitioner, two ophthalmic medical practitioners<sup>12</sup>; (b) where the practitioner is an optician, two opticians<sup>13</sup>; (c) where the practitioner is a chemist<sup>14</sup>, two registered pharmacists<sup>15</sup>. The Secretary of State must appoint a day for the hearing and give the practitioner and the appropriate health authority or primary care trust not less than 21 days' notice in writing of the day, time and place of the hearing<sup>16</sup>.

No person may, without the consent of the practitioner, and the persons appointed to hear the appeal, be admitted to a hearing before those persons unless he is<sup>17</sup>: (i) the practitioner<sup>18</sup>; (ii) a representative of the appropriate health authority who is an officer or a member of it<sup>19</sup>; (iii) a person (who may be a barrister, a solicitor or any other person) engaged by a person or body mentioned in head (i) or (ii) above to represent them before the persons appointed to hear the appeal<sup>20</sup>; or (iv) a person whose attendance is required for the purpose of giving evidence to the persons so appointed<sup>21</sup>. The practitioner and the appropriate health authority or primary care trust may not rely on any facts or contentions which do not appear to the Secretary of State or the persons hearing the appeal to have been raised in the course of the proceedings before the discipline committee unless<sup>22</sup>, not less than seven days before the hearing, notice in writing was given to the Secretary of State of such facts or contentions<sup>23</sup>, and the Secretary of State or the persons hearing the appeal give their consent<sup>24</sup>.

The persons hearing the appeal must draw up a report and present it to the Secretary of State who must take it into consideration and determine the appeal<sup>25</sup>. The Secretary of State must give notice in writing to the practitioner and the health authority or primary care trust of his determination<sup>26</sup> and must include with the notice a statement of his reasons for the determination<sup>27</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the notice of appeal and grounds for appeal see PARA 632.

3 As to the meaning of 'practitioner' see PARA 622 note 1.



4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(1) (reg 10 substituted by SI 1996/703). This provision is expressed to be subject to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(5): see note 8.

5 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1. As to the service of documents see PARA 637.

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(2) (as substituted (see note 4); and amended by SI 2002/2469).

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(3) (as substituted: see note 4).

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(4) (as substituted: see note 4). However, where a practitioner who is not appealing under reg 9(1)(a) (see PARA 632), appeals under reg 9(1)(b) (see PARA 632) against a decision in which the appropriate health authority or primary care trust has determined to take action under reg 8(5)(a) or (c) (see PARA 631) his appeal may be dismissed without an oral hearing if the practitioner has stated in writing that he does not want such a hearing: reg 10(4), (5) (reg 10 as so substituted; reg 10(5) amended by SI 2002/2469, SI 2004/865, SI 2004/1016, SI 2006/562, SI 2006/946). As to the meaning of 'writing' see PARA 7 note 2.

9 Where a person appointed by the Secretary of State for such a purpose dies or resigns before the completion of that purpose, or is unable or refuses to complete that purpose, the Secretary of State may rescind that appointment together with that of any other person so appointed in relation to the same matter, and appoint different persons in accordance with the provision in question: see the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 36(1) (amended by SI 1996/703). Where different persons are so appointed, any matter referred to them must be considered afresh: National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 36(2). For these purposes a person has completed the purpose for which he was appointed if he has indicated to any other person also appointed for that purpose the decision to be given or recommendation to be made, even if he has not signed a report embodying the decision or recommendation: reg 36(3).

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(6)(a) (as substituted: see note 4).

11 See the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(6)(b) (as substituted (see note 4); and amended by SI 2006/562; SI 2006/946).

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(7)(c) (as substituted: see note 4). As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3: definition applied by reg 2(1).

13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(7)(d) (as substituted: see note 4). As to the meaning of 'optician' see PARA 620 note 3.

14 As to the meaning of 'chemist' see PARA 349 note 1: definition applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1).

15 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(7)(e) (as substituted: see note 4). As to the meaning of 'registered pharmacist' see PARA 339 note 19.

16 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(9) (as substituted (see note 4); and amended by SI 2002/2469).

17 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(10) (as substituted: see note 4). This provision is expressed to be subject to the provisions of reg 33: see PARA 638.

18 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(10)(a) (as substituted: see note 4).

19 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(10)(b) (as substituted: see note 4).

20 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(10)(c) (as substituted: see note 4).

21 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(10)(d) (as substituted: see note 4). The provisions of the Local Government Act 1972 s 250(2), (3) (which relate to the summoning of witnesses and other matters: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply to an appeal held under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10 as if in the Local Government Act 1972 s 250(3) for the words the 'person appointed to hold the inquiry' there were substituted the words 'persons hearing the appeal': National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(15) (as so substituted).

22 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(11) (as substituted (see note 4); and amended by SI 2002/2469). As to discipline committees see PARA 619. As to the hearing before the discipline committee see PARA 628.

23 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(11)(a) (as substituted: see note 4).

24 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(11)(b) (as substituted: see note 4).

25 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(12) (as substituted: see note 4).

26 In his determination under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(1) (see the text to notes 1-4) or 10(12) (see the text to note 25) of the matters mentioned in reg 9(3)(c), (3)(d) or (4)(b) (see PARA 632).

27 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(14) (as substituted (see note 4); and amended by SI 2002/2469). As to determination by the Secretary of State as to the recovery of amounts from practitioners following appeal see PARA 634.

## UPDATE

### **633 Procedure on appeal**

TEXT AND NOTES 12, 13--SI 1992/664 reg 10(7)(c), (d) omitted in relation to England: SI 2008/1700.

NOTE 17--SI 1992/664 reg 10(10) amended: SI 2008/2683.

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#### **634. Recovery of amounts from practitioners following appeal.**

Where: (1) in the case of an appeal against an adverse finding of fact or inference drawn from a finding of fact<sup>1</sup>, the Secretary of State<sup>2</sup> determines that a practitioner<sup>3</sup> has failed to comply with one or more of his terms of service<sup>4</sup>; or (2) an appeal is made<sup>5</sup> against a determination by a health authority or primary care trust<sup>6</sup>, the Secretary of State must determine whether any, and if so what, amount is to be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise<sup>7</sup>.

The Secretary of State must give notice in writing<sup>8</sup> of his determination to the practitioner and the appropriate health authority or primary care trust<sup>9</sup>, and must include with the notice a statement of the reasons for his determination<sup>10</sup>. Where the Secretary of State has determined that an amount be recovered from a practitioner, he must direct the appropriate health authority or primary care trust to recover that amount either by deduction from the practitioner's remuneration or otherwise and that health authority or primary care trust must<sup>11</sup> comply with that direction<sup>12</sup>. Any sum which falls to be recovered by a health authority or primary care trust is, to the extent that it is not recovered by deduction from the practitioner's remuneration, a debt owed by the practitioner to that health authority or primary care trust<sup>13</sup>.

1    Ie an appeal under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(1)(a): see PARA 632.

2    As to the Secretary of State see PARA 6 note 8.

3    As to the meaning of 'practitioner' see PARA 622 note 1.

4    National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 11(1)(a) (reg 11 substituted by SI 1996/703). As to the meaning of 'terms of service' see PARA 622 note 2.

5    Ie under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 9(1)(b) or (c): see PARA 632.

6    National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 11(1)(b) (as substituted: see note 4).

7    National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 11(1) (as substituted: see note 4). As to the determination of appeals to the Secretary of State generally see PARA 633.

8    As to the meaning of 'writing' see PARA 7 note 2. As to the service of documents see PARA 637.

9 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1.

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 11(5) (as substituted (see note 4); and amended by SI 2002/2469).

11 In subject to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(8) (see PARA 631) (as modified by reg 11(7)). For these purposes reg 8(8) has effect as if for the words 'an appropriate health authority or primary care trust determines under this regulation that action should be taken in accordance with any of the provisions of reg 8(5)(a) or (c) that action be taken' there were substituted the words 'the Secretary of State determines under reg 11(1) that an amount should be recovered that amount be recovered': reg 11(7) (as substituted (see note 4); and amended by SI 2002/2469, SI 2004/865, SI 2004/1016, SI 2006/562, SI 2006/946).

12 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 11(6) (as substituted (see note 4); and amended by SI 2002/2469).

13 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 11(9) (as substituted (see note 4); and amended by SI 2002/2469).

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### **635. Death of practitioner.**

Where, at any time after a disciplinary matter<sup>1</sup> has been referred for investigation<sup>2</sup> but before the appropriate health authority or primary care trust<sup>3</sup> makes a determination<sup>4</sup> in relation to that matter, the practitioner<sup>5</sup> to whom the matter relates dies, no further action may be taken<sup>6</sup> in relation to that practitioner<sup>7</sup>.

1 As to the meaning of 'disciplinary matter' see PARA 623 note 3.

2 Ie under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 5(1): see PARA 623.

3 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1.

4 Ie under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8: see PARA 631.

5 As to the meaning of 'practitioner' see PARA 622 note 1.

6 Ie under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664.

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 13 (substituted by SI 1996/703; and amended by SI 2002/2469).

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### **636. Power of local representative committees to consider complaints.**

A local optical committee<sup>1</sup> may consider any complaint<sup>2</sup> made to it by any optician<sup>3</sup> against an optician providing general ophthalmic services<sup>4</sup> in the relevant locality<sup>5</sup> involving any question of the efficiency of such services in that locality<sup>6</sup>. A local pharmaceutical committee<sup>7</sup> may consider any complaint made to it by any chemist<sup>8</sup> against a chemist providing pharmaceutical services<sup>9</sup> in the relevant locality involving any question of the efficiency of such services in that locality<sup>10</sup>.

1 As to local optical committees see PARAS 327, 337.

2 As to the meaning of 'complaint' see PARA 622 note 1.

3 As to the meaning of 'optician' see PARA 620 note 3.

4 As to the meaning of 'general ophthalmic services' see PARA 295.

5 'Relevant locality' means the locality in respect of which the local optical committee or local pharmaceutical committee in question is recognised: see the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, regs 2(1), 20(3) (reg 2(1) definition substituted by SI 2006/562, SI 2006/946).

6 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 20(1).

7 As to local pharmaceutical committees see PARA 351.

8 As to the meaning of 'chemist' see PARA 349 note 1: definition applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1).

9 As to the meaning of 'pharmaceutical services' see PARA 339.

10 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 20(2).

### **UPDATE**

### **636 Power of local representative committees to consider complaints**

NOTE 5--SI 1992/664 reg 20(3) omitted in relation to England: SI 2008/1700.





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### **637. Service of documents.**

Any notice or other document required or authorised<sup>1</sup> to be served on any person<sup>2</sup> or to be given or sent to any person may be served, given or sent: (1) by delivering it or sending it by post to him at his usual or last-known address, which in the case of a ophthalmic medical practitioner<sup>3</sup>, optician<sup>4</sup> or chemist<sup>5</sup> may be the address given in the ophthalmic or pharmaceutical list<sup>6</sup> in which his name is included<sup>7</sup>; (2) in the case of a health authority<sup>8</sup> or primary care trust<sup>9</sup>, a local optical committee<sup>10</sup> or local pharmaceutical committee<sup>11</sup>, or a discipline committee<sup>12</sup>, by delivering it or sending it by post to their clerk, chief officer or secretary at its principal office<sup>13</sup>; (3) in the case of the Secretary of State<sup>14</sup>, by delivering it or sending it by post to his principal office<sup>15</sup>; (4) in the case of a person represented by (a) a solicitor, by delivering it or sending it by post to that solicitor at his professional address<sup>16</sup>; (b) an officer of a community health council<sup>17</sup>, by delivering it or sending it by post to the council's secretary at its principal office<sup>18</sup>; (c) any other person, by delivering it or sending it by post to that other person at his usual or last-known address<sup>19</sup>. Where a notice or document is delivered to a person under these provisions it must be treated as served on the day on which it was so delivered, and where a notice or document is sent by post to a person it must be treated as served on the second day after that on which it was posted<sup>20</sup>.

1    Ie by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664.

2    As to the meaning of 'person' see PARA 17 note 2.

3    As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3: definition applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1).

4    As to the meaning of 'optician' see PARA 620 note 3.

5    As to the meaning of 'chemist' see PARA 349 note 1: definition applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1).

6    As to the meaning of 'ophthalmic list' see PARA 299; and as to the meaning of 'pharmaceutical list' see PARA 353: definitions applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1).

7    National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 32(1)(a) (reg 32(1) numbered as such, 32(2) added, by SI 1996/703; National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 32(1)(a) amended by SI 2004/865, SI 2004/1016).

8    As to health authorities see PARA 449 note 1.

- 9 As to primary care trusts see PARA 111.
- 10 As to local optical committees see PARAS 327, 337.
- 11 As to local pharmaceutical committees see PARA 351.
- 12 As to discipline committees see PARA 619.
- 13 See the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 32(1)(b) (as renumbered (see note 7); and amended by SI 2003/1937).
- 14 As to the Secretary of State see PARA 6 note 8.
- 15 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 32(1)(c) (as renumbered: see note 7).
- 16 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 32(1)(d)(i) (as renumbered: see note 7).
- 17 As to community health councils in Wales see PARA 74.
- 18 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 32(1)(d)(ii) (as renumbered: see note 7).
- 19 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 32(1)(d)(iii) (as renumbered: see note 7).
- 20 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 32(2) (as added: see note 7).

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### **638. Attendance by a member of the Administrative Justice and Tribunals Council.**

A member of the Administrative Justice and Tribunals Council<sup>1</sup> may attend in that capacity: (1) a hearing before any discipline committee<sup>2</sup>; (2) a meeting of a health authority<sup>3</sup> or primary care trust<sup>4</sup> while it is considering a report of such a committee<sup>5</sup>; (3) a hearing before persons appointed<sup>6</sup> on an appeal to the Secretary of State<sup>7</sup>, and may remain with the health authority, primary care trust, or persons appointed during, but may take no part in, their deliberations as to their decision or recommendations, notwithstanding that other persons present at the hearing have been required to withdraw<sup>8</sup>.

1 The regulations refer to the Council on Tribunals, but it was abolished and replaced by the Administrative Justice and Tribunals Council as from 1 November 2007: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 55 et seq.

2 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 33(b). As to discipline committees see PARA 619. As to hearings before such committees see PARA 628.

3 As to health authorities see PARA 449 note 1.

4 As to primary care trusts see PARA 111.

5 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 33(c) (amended by SI 2003/1937). As to such meetings see PARA 631.

6 *Ie* under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 10(6): see PARA 633.

7 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 33(d) (amended by SI 1996/703). As to the Secretary of State see PARA 6 note 8.

8 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 33 (amended by SI 2002/2469).

### **UPDATE**

### **638 Attendance by a member of the Administrative Justice and Tribunals Council**

TEXT AND NOTES--SI 1992/664 reg 33 amended: SI 2008/2683.

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**639. Power to dispense with requirements as to notices, applications and documents.**

The Secretary of State<sup>1</sup> may dispense with any requirements<sup>2</sup> respecting notices, applications, documents or otherwise in any case where it appears to him just and proper to do so<sup>3</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 Ie requirements of the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664.

3 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 34.

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#### **640. Referral of matters to professional bodies.**

Where, in relation to any disciplinary matter<sup>1</sup> an appropriate health authority or primary care trust<sup>2</sup> receives a report of a discipline committee<sup>3</sup>, and having regard to the facts found by the discipline committee in relation to that matter, that health authority or primary care trust considers that the matter should be brought to the attention of the relevant professional body<sup>4</sup>, it may refer to that body any documents in its possession connected with that disciplinary matter<sup>5</sup>.

Where, in relation to any such disciplinary matter the Secretary of State<sup>6</sup>: (1) receives a copy of the report of a discipline committee<sup>7</sup> and the consequent determination of the appropriate health authority or primary care trust<sup>8</sup>, or makes a determination of an appeal<sup>9</sup>; (2) that matter has not been the subject of a referral<sup>10</sup> by the health authority or primary care trust<sup>11</sup>; and (3) the Secretary of State considers that the matter should be brought to the attention of the relevant professional body<sup>12</sup>, he may refer to that body any documents in his possession connected with that disciplinary matter and any appeal<sup>13</sup>.

1 As to the meaning of 'disciplinary matter' see PARA 623 note 3.

2 As to the meaning of 'appropriate health authority or primary care trust' see PARA 622 note 1.

3 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(1)(a) (reg 37 substituted by SI 1996/703; National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(1), (2) amended by SI 2002/2469). As to discipline committees see PARA 619. As to the committee's report see PARA 630. As to the consideration of the report by the appropriate health authority or primary care trust see PARA 631.

4 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(1)(b) (as substituted and amended: see note 3). 'Relevant professional body' means in relation to an ophthalmic medical practitioner, the General Medical Council; in relation to a dentist, the General Dental Council; in relation to an optician, the General Optical Council; in relation to a pharmacist, the Royal Pharmaceutical Society of Great Britain: reg 37(4) (as so substituted; and amended by SI 2004/865, SI 2004/1016). As to the meaning of 'ophthalmic medical practitioner' see PARA 297 note 3: definition applied by the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 2(1). As to the meanings of 'dentist' and 'optician' see PARA 620 note 3. As to the meaning of 'pharmacist' see PARA 620 note 5. As to the General Medical Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 13 et seq. As to the General Dental Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 389 et seq. As to the General Optical Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 813 et seq. As to the Royal Pharmaceutical Society of Great Britain see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 881 et seq.

5 National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(1) (as substituted: see note 3).

6 As to the Secretary of State see PARA 6 note 8.

7     le pursuant to the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 8(7): see PARA 631.

8     National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(2)(a)(i) (as substituted and amended: see note 3).

9     National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(2)(a)(ii) (as substituted: see note 3). As to appeals to the Secretary of State see PARA 632.

10    le under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(1): see the text to notes 1-5.

11    National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(2)(b) (as substituted and amended: see note 4).

12    National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(2)(c) (as substituted: see note 4).

13    National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 37(2) (as substituted: see note 4).

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## **(vii) The Health Service Commissioner for England**

### **641. Appointment and terms of office.**

There continues to be a Health Service Commissioner for England<sup>1</sup> for the purpose of conducting investigations<sup>2</sup> into failures or maladministration in the provision of services by health service bodies<sup>3</sup>. Her Majesty may by letters patent appoint a person to be the Commissioner<sup>4</sup>. A person appointed to be the Commissioner holds office until the end of the period for which he is appointed<sup>5</sup>; but may be relieved of office by Her Majesty at his own request<sup>6</sup>, or by Her Majesty on the ground of misbehaviour in consequence of addresses from both Houses of Parliament<sup>7</sup>.

Where the office of Commissioner becomes vacant, Her Majesty may, pending the appointment of the new Commissioner, appoint a person to act as the Commissioner at any time during the period of 12 months<sup>8</sup> beginning with the date on which the vacancy arose<sup>9</sup>. A person appointed as acting Commissioner, holds office during Her Majesty's pleasure and, subject to that, holds office<sup>10</sup> until the appointment of the new Commissioner or the expiry of the period of 12 months beginning with the date on which the vacancy arose, whichever occurs first<sup>11</sup>. A person appointed as an acting Commissioner is, while he holds office, to be treated for all purposes<sup>12</sup> as the Commissioner<sup>13</sup>.

A person who is a member of a relevant health service body<sup>14</sup> must not be appointed the Commissioner or acting Commissioner; and a person so appointed must not, during his appointment, become a member of such a body<sup>15</sup>. A person who is a relevant family health service provider<sup>16</sup> must not be appointed the Commissioner or acting Commissioner; and a person so appointed must not, during his appointment, become a relevant family health service provider<sup>17</sup>.

Detailed provision is made concerning the salary, pension and other benefits to be paid to the Commissioner<sup>18</sup>. Any salary, pension or other benefit payable to the Commissioner or an acting Commissioner is charged on and issued out of the Consolidated Fund<sup>19</sup>. The expenses of the Commissioner<sup>20</sup> are paid out of money provided by Parliament<sup>21</sup>, and must not exceed such amount as the Treasury may sanction<sup>22</sup>.

1 The office of Health Service Commissioner for Wales has been abolished with provision made for the transfer of its staff, property, rights and liabilities to the Public Services Ombudsman for Wales: see the Public Services Ombudsman (Wales) Act 2005 ss 36(3), 37, Sch 5. As to the Public Services Ombudsman for Wales see PARA 655. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

2 In accordance with the Health Service Commissioners Act 1993. As to investigations see PARAS 643-645. The Commissioner's functions are limited to the investigation of complaints and he has no power of investigation at large: *R (on the application of Redmond) v Health Service Comr*, *R (on the application of Cavanagh) v Health Service Comr*, *R (on the application of Bhatt) v Health Service Comr* [2005] EWCA Civ 1578, [2006] 3 All ER 543, [2006] 1 FCR 7.

3 See the Health Service Commissioners Act 1993 s 1(1)(a). As to the meaning of 'health service body' see PARA 643 note 1.

4 Health Service Commissioners Act 1993 Sch 1 para 1 (Sch 1 para 1 substituted, and Sch 1 paras 1A-1E added, by SI 2006/1031). A person appointed to be the Commissioner is not eligible for re-appointment: Health Service Commissioners Act 1993 Sch 1 para 1E (as so added). As to letters patent see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 920.

5 Health Service Commissioners Act 1993 Sch 1 para 1A (as added: see note 4). That period must be not more than seven years: Sch 1 para 1B (as so added).

6 Health Service Commissioners Act 1993 Sch 1 para 1C (as added: see note 4).

7 Health Service Commissioners Act 1993 Sch 1 para 1D (as added: see note 4). As to offices held during good behaviour see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 903.

8 As to the meaning of 'month' see PARA 28 note 16.

9 Health Service Commissioners Act 1993 Sch 1 para 2(1) (amended by the Government of Wales Act 1998 s 112, Sch 10 para 16(4); SI 2004/1823). A person appointed to act as an acting Commissioner may have held office as the Commissioner: Health Service Commissioners Act 1993 Sch 1 para 2(1A) (Sch 1 para 2(1A), (1B) added by SI 2006/1031). A person appointed as an acting Commissioner is eligible for appointment as the Commissioner unless he has already held office as the Commissioner: Health Service Commissioners Act 1993 Sch 1 para 2(1B) (as so added).

10 Health Service Commissioners Act 1993 Sch 1 para 2(2) (amended by SI 2006/1031).

11 Health Service Commissioners Act 1993 Sch 1 para 2(2)(a). In other respects, he holds office in accordance with the terms and conditions of his appointment which are such as the Secretary of State may, with the approval of the Minister for the Civil Service, determine: Sch 1 para 2(2)(b) (amended by virtue of SI 1995/269). As to the Secretary of State see PARA 6 note 8. As to the Minister for the Civil Service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 427 et seq.

12 Ie except for the purposes of the Health Service Commissioners Act 1993 Sch 1 paras 1 (see the text to notes 1-4), 2, 4-10 (see the text to note 18).

13 Health Service Commissioners Act 1993 Sch 1 para 2(3) (substituted by SI 2006/1031).

14 'Relevant health service body' means a body mentioned in the Health Service Commissioners Act 1993 s 2(1) (see PARA 643): Sch 1 para 3(2) (amended by SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 53(1), (5)(b)).

15 Health Service Commissioners Act 1993 Sch 1 para 3(1) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 53(1), (5)(a)).

16 'Relevant family health service provider' means a person mentioned in the Health Service Commissioners Act 1993 s 2A(1) (see PARA 643): Sch 1 para 3A(2) (Sch 1 para 3A added by the Health Service Commissioners (Amendment) Act 1996 s 3, Sch 1 para 7; Health Service Commissioners Act 1993 Sch 1 para 3A(2) amended by SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 53(1), (6)(b)).



17 Health Service Commissioners Act 1993 Sch 1 para 3A(1) (as added (see note 16); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 53(1), (6)(a)).

18 See the Health Service Commissioners Act 1993 Sch 1 paras 4-10 (Sch 1 para 4 amended by SI 1999/1820; SI 2004/1823; Health Service Commissioners Act 1993 Sch 1 paras 4, 5, 7 amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 53(1), (7); Health Service Commissioners Act 1993 Sch 1 para 6 amended by SI 2004/1823; Health Service Commissioners Act 1993 Sch 1 para 9 amended by SI 2004/1823; and by virtue of SI 1995/269).

19 Health Service Commissioners Act 1993 Sch 1 para 15. As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

20 Health Service Commissioners Act 1993 Sch 1 para 14 (amended by SI 1999/1820; SI 2004/1823; Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 53(1), (11)).

21 Health Service Commissioners Act 1993 Sch 1 para 14(a). As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.

22 Health Service Commissioners Act 1993 Sch 1 para 14(b). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

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## **642. Officers and expenses.**

The Health Service Commissioner for England<sup>1</sup> may appoint such officers<sup>2</sup> as he may determine with the approval of the Treasury<sup>3</sup> as to numbers and conditions of service<sup>4</sup>; and may appoint and pay a mediator or other appropriate person<sup>5</sup> to assist him in the conduct of an investigation<sup>6</sup>. Any functions<sup>7</sup> of the Commissioner may be performed by any officer of the Commissioner authorised by him for that purpose, or by any officer so authorised of the Parliamentary Commissioner for Administration<sup>8</sup> or the Public Services Ombudsman for Wales<sup>9</sup>. To assist him in any investigation the Commissioner may obtain advice from any person who, in his opinion, is qualified to give it<sup>10</sup>. The Commissioner may pay to any such person from whom he obtains advice such fees or allowances as he may determine with the approval of the Treasury<sup>11</sup>.

1 As to the Health Service Commissioner for England see PARA 641.

2 'Officer' includes employee: Health Service Commissioners Act 1993 s 19 (definition amended by the Government of Wales Act 1998 s 112, Sch 10 para 15(4); the Public Services Ombudsman (Wales) Act 2005 s 39, Sch 6 paras 27, 52(1), (3), Sch 7).

3 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 Health Service Commissioners Act 1993 Sch 1 para 11(1) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 53(1), (8)).

5 As to the meaning of 'person' see PARA 17 note 2.

6 Health Service Commissioners Act 1993 Sch 1 para 11(1A) (added by SI 2007/1889). As to investigations see PARAS 643-645.

7 'Functions' includes powers and duties: Health Service Commissioners Act 1993 s 19.

8 As to the Parliamentary Commissioner for Administration see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq.

9 Health Service Commissioners Act 1993 Sch 1 para 12 (amended by the Government of Wales Act 1998 s 112, Sch 10, para 16(8); SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 53(1), (9)). As to the Public Services Ombudsman for Wales see PARA 655. For the purposes of conducting a joint investigation referred to in the Health Service Commissioners Act 1993 s 18ZA (see PARA 654), any function of the Commissioner may be performed by any officer or member of staff of the Parliamentary Commissioner for Administration or the Commission for Local Administration in England who is authorised for the purpose by the

Commissioner: Sch 1 para 12A (added by SI 2007/1889). As to the Commission for Local Administration in England see **LOCAL GOVERNMENT** vol 69 (2009) PARA 839.

10 Health Service Commissioners Act 1993 Sch 1 para 13(1) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 53(1), (10)(a)).

11 Health Service Commissioners Act 1993 Sch 1 para 13(2) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 53(1), (10)(b)).

## **UPDATE**

### **642 Officers and expenses**

NOTE 9--1993 Act Sch 1 para 12A amended: Local Government and Public Involvement in Health Act 2007 Sch 12 para 15(4).

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### **643. Bodies and persons subject to investigation.**

The health service bodies<sup>1</sup> subject to investigation by the Health Service Commissioner for England are<sup>2</sup>: (1) strategic health authorities<sup>3</sup>; (2) specified special health authorities<sup>4</sup> not exercising functions<sup>5</sup> only or mainly in Wales<sup>6</sup>; (3) National Health Service trusts managing a hospital, or other establishment or facility, in England<sup>7</sup>; (4) primary care trusts<sup>8</sup>; (5) NHS foundation trusts<sup>9</sup>.

Persons<sup>10</sup> are subject to investigation by the Commissioner if they are, or were at the time of the action complained of<sup>11</sup>:

- 415 (a) persons (whether individuals or bodies) providing services under a contract entered into by them<sup>12</sup> with a primary care trust<sup>13</sup>;
- 416 (b) persons (whether individuals or bodies) undertaking to provide<sup>14</sup> in England general ophthalmic services<sup>15</sup> or pharmaceutical services<sup>16</sup>;
- 417 (c) individuals performing in England primary medical services or primary dental services<sup>17</sup> (except as employees of, or otherwise on behalf of, a health service body or an independent provider)<sup>18</sup>; or
- 418 (d) individuals providing in England local pharmaceutical services in accordance with arrangements made under a pilot scheme<sup>19</sup> (except as employees of, or otherwise on behalf of, a health service body or an independent provider)<sup>20</sup>.

Persons are subject to investigation by the Commissioner if<sup>21</sup> they are, or were at the time of the action complained of, persons (whether individuals or bodies) providing services<sup>22</sup> in England under arrangements with health service bodies or family health service providers<sup>23</sup>, and they are not, or were not at the time of the action complained of, themselves health service bodies or family health service providers<sup>24</sup>.

1 References in the Health Service Commissioners Act 1993 to a 'health service body' are to any of the bodies mentioned in heads (1)-(5) in the text: ss 2(4), 19.

2 Health Service Commissioners Act 1993 s 2(1), (4) (s 2(1) amended by the Public Services Ombudsman (Wales) Act 2005 ss 38, 39(1), Sch 6 para 31(1), (2)). As to the Health Service Commissioner for England see PARA 641.

3 Health Service Commissioners Act 1993 s 2(1)(a) (substituted by the National Health Service Reform and Health Care Professions Act 2002 s 1(3), Sch 1 Pt 2 para 47). As to strategic health authorities see PARA 94 et seq.

4 I.e. special health authorities established on or before 1 April 1974 (Health Service Commissioners Act 1993 s 2(5)(a)), or established after that date and designated as ones to which s 2 applies (s 2(5)(b) (amended by the Government of Wales Act 1998 ss 112, 152, Sch 10 para 3(3), Sch 18 Pt I)). A designation made for these purposes must be made by Order in Council; and a statutory instrument containing such an Order in Council must be subject to annulment in pursuance of a resolution of either House of Parliament: Health Service Commissioners Act 1993 s 2(6) (substituted by the Public Services Ombudsman (Wales) Act 2005 ss 38, 39(1), Sch 6 paras 31(1), (4)). The following orders have been made: the Health Service Commissioner for England

(Special Health Authorities) Order 2005, SI 2005/251; the Health Service Commissioner for England (Special Health Authorities) (No 2) Order 2005, SI 2005/3428; the Health Service Commissioner for England (Special Health Authorities) Order 2006, SI 2006/305; the Health Service Commissioner for England (Special Health Authorities) (Revocation) Order 2006, SI 2006/3332. As to special health authorities see PARA 136.

5 As to the meaning of 'functions' see PARA 642 note 7.

6 Health Service Commissioners Act 1993 s 2(1)(c) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 paras 60, 61(a)). As to the meaning of 'Wales' see PARA 6 note 2.

7 Health Service Commissioners Act 1993 s 2(1)(d). As to the meaning of 'England' see PARA 6 note 2. As to NHS trusts see PARA 155.

8 Health Service Commissioners Act 1993 s 2(1)(da) (added by the Health Act 1999 s 65(1), Sch 4 para 85(1), (2)(a); and amended by the National Health Service Reform and Health Care Professions Act 2002 ss 2(5), 37(2), Sch 2 Pt 2 para 61(1), (2)(a), Sch 9 Pt 1). As to primary care trusts see PARA 111.

9 Health Service Commissioners Act 1993 s 2(1)(db) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 93, 94). As to NHS foundation trusts see PARA 174.

10 In the Health Service Commissioners Act 1993 references to a 'family health service provider' are to any person mentioned in heads (a)-(d) in the text, and references to 'family health services' are to any of the services so mentioned: s 2A(4) (s 2A added by the Health Service Commissioners (Amendment) Act 1996 s 1; Health Service Commissioners Act 1993 s 2A(4) amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 32(1), (4)). As to the meaning of 'person' see PARA 17 note 2.

11 Health Service Commissioners Act 1993 s 2A(1) (as added (see note 10); and amended by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 para 68(2); the Health Service Commissioners (Amendment) Act 2000 s 1(1), (2)(a); the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 32(1), (2)).

12 Ie under the National Health Service Act 2006 s 84 (see PARA 242) or s 100 (see PARA 278). As from a day to be appointed this provision also refers to a contract entered into under s 117 (see PARA 330): see the Health Service Commissioners Act 1993 s 2A(1)(a) (s 2A as added (see note 10); s 2A(1)(a) substituted by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 paras 60, 62(1), (2)(a), amended by the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 165, 166(a), and prospectively amended by the Health Act 2006 s 80(1), Sch 8 paras 32, 33(a)). At the date at which this volume states the law no such day had been appointed.

13 Health Service Commissioners Act 1993 s 2A(1)(a) (as added, substituted and amended: see note 12).

14 Ie under the National Health Service Act 2006.

15 As from a day to be appointed the reference to general ophthalmic services is repealed: see the Health Service Commissioners Act 1993 s 2A(1)(b) (as added (see note 10); and prospectively amended by the Health Act 2006 Sch 8 paras 32, 33(b), Sch 9). At the date at which this volume states the law no such day had been appointed. As to general ophthalmic services see PARA 295.

16 Health Service Commissioners Act 1993 s 2A(1)(b) (as added (see note 10); and amended by SI 2002/2861, the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 165, 166(b)). As to pharmaceutical services see PARA 339.

17 Ie in accordance with arrangements made under the National Health Service Act 2006 s 92 (see PARA 267) or s 107 (see PARA 288).

18 Health Service Commissioners Act 1993 s 2A(1)(c) (as added (see note 10); and amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 11 paras 60, 62(1), (2)(b), the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 165, 166(c)). As to the meaning of 'independent provider' see note 24.

19 Ie a pilot scheme established under the National Health Service Act 2006 s 134: see PARA 419.

20 Health Service Commissioners Act 1993 s 2A(1)(d) (s 2A as added (see note 10); s 2A(1)(d) added by SI 2002/2861, and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 165, 166(d)).

21 Health Service Commissioners Act 1993 s 2B(1) (s 2B added by the Health Service Commissioners (Amendment) Act 1996 s 1; Health Service Commissioners Act 1993 s 2B(1) amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 33(1), (2)).

22 The services provided may be services of any kind: Health Service Commissioners Act 1993 s 2B(4) (as added (see note 21); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 33(1), (4)).

23 Health Service Commissioners Act 1993 s 2B(1)(a) (as added (see note 21); and amended by the Health Service Commissioners (Amendment) Act 2000 s 1(1), (3)(a)).

24 Health Service Commissioners Act 1993 s 2B(1)(b) (as added (see note 21); and amended by the Health Service Commissioners (Amendment) Act 2000 s 1(1), (3)(b)). In the Health Service Commissioners Act 1993 references to an 'independent provider' are to any person providing services as mentioned in s 2B(1): s 2B(5) (as so added; and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 33(1), (5)).

## UPDATE

### 643 Bodies and persons subject to investigation

NOTES 12, 15--Appointed day is 1 August 2008: SI 2008/1972.

TEXT AND NOTES 21-24--In addition, persons are subject to investigation by the Commissioner if they are, or were at the time of the action complained of, providing services in respect of which direct payments have been made under the National Health Service Act 2006 s 12(1) or (4), and they are not, or were not at the time of the action complained of, health service bodies: Health Service Commissioners Act 1993 ss 2B(1A), 19 (s 2B(1A) added, ss 2B(5), 19 amended by the Health Act 2009 s 12).

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#### **644. Matters subject to investigation: remit of Commissioner.**

On a complaint<sup>1</sup> duly made to the Health Service Commissioner for England<sup>2</sup> by or on behalf of a person<sup>3</sup> that he has sustained injustice or hardship in consequence of: (1) a failure in a service provided by a health service body<sup>4</sup>; (2) a failure of such a body to provide a service which it was a function<sup>5</sup> of the body to provide<sup>6</sup>; or (3) maladministration connected with any other action taken by or on behalf of such a body<sup>7</sup>, the Commissioner may investigate<sup>8</sup> the alleged failure or other action<sup>9</sup>.

Where a family health service provider<sup>10</sup> has undertaken to provide any family health services<sup>11</sup> and a complaint is duly made to the Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of: (a) action taken by the family health service provider in connection with the services<sup>12</sup>; (b) action taken in connection with the services by a person employed by the family health service provider in respect of the services<sup>13</sup>; (c) action taken in connection with the services by a person acting on behalf of the family health service provider in respect of the services<sup>14</sup>; or (d) action taken in connection with the services by a person to whom the family health service provider has delegated any functions in respect of the services<sup>15</sup>, the Commissioner may<sup>16</sup> investigate the alleged action<sup>17</sup>.

Where an independent provider<sup>18</sup> has made an arrangement with a health service body or a family health service provider to provide a service (of whatever kind) and a complaint is duly made to the Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of: (i) a failure in the service provided by the independent provider<sup>19</sup>; (ii) a failure of the independent provider to provide the service<sup>20</sup>; or (iii) maladministration connected with any other action taken in relation to the service<sup>21</sup>, the Commissioner may<sup>22</sup> investigate the alleged failure or other action<sup>23</sup>.

Where a complaint is duly made to the Commissioner by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by any person or body in the exercise of any function relating to the handling and consideration of complaints about health care<sup>24</sup>, the Commissioner may<sup>25</sup> investigate the alleged maladministration<sup>26</sup>.

As from a day to be appointed<sup>27</sup>, where a complaint is duly made to the Commissioner by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by any person or body: (A) in the exercise of any functions under a redress scheme<sup>28</sup>; (B) in connection with a settlement agreement entered into under such a scheme<sup>29</sup>; or (C) in the exercise of any functions<sup>30</sup> relating to the handling and consideration of complaints about maladministration in connection with such a scheme<sup>31</sup>, the Commissioner may<sup>32</sup> investigate the alleged maladministration<sup>33</sup>.

In determining whether to initiate, continue or discontinue an investigation, the Commissioner must act in accordance with his own discretion<sup>34</sup>. Any question whether a complaint is duly made to the Commissioner must be determined by him<sup>35</sup>.

Nothing in the Health Service Commissioners Act 1993 authorises or requires the Commissioner to question the merits of a decision taken without maladministration by<sup>36</sup>: (aa) a health service body in the exercise of a discretion vested in that body<sup>37</sup>; (bb) a family health service provider<sup>38</sup>, a person employed by a family health service provider<sup>39</sup>, a person acting on behalf of a family health service provider<sup>40</sup>, or a person to whom a family health service provider has delegated any functions<sup>41</sup>; (cc) an independent provider<sup>42</sup>, a person employed by an

independent provider<sup>43</sup>, a person acting on behalf of an independent provider<sup>44</sup>, or a person to whom an independent provider has delegated any functions<sup>45</sup>.

1 As to complaints see PARA 646.

2 As to the Health Service Commissioner for England see PARA 641.

3 As to the meaning of 'person' see PARA 17 note 2.

4 Health Service Commissioners Act 1993 s 3(1)(a). As to the meaning of 'health service body' see PARA 643 note 1.

5 As to the meaning of 'functions' see PARA 642 note 7.

6 Health Service Commissioners Act 1993 s 3(1)(b).

7 Health Service Commissioners Act 1993 s 3(1)(c). 'Action' includes failure to act, and related expressions must be construed accordingly: s 19.

8 Is subject to the provisions of the Health Service Commissioners Act 1993. As to matters excluded from investigation see PARA 645. As to the procedure in respect of investigations see PARA 647.

9 Health Service Commissioners Act 1993 s 3(1) (s 3(1), (2)-(6) amended by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 35(1), (2)). Any failure or maladministration mentioned in the Health Service Commissioners Act 1993 s 3(1) may arise from action of: (1) the health service body (s 3(1ZA)(a) (s 3(1ZA) added by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 para 68(5)); (2) a person employed by that body (Health Service Commissioners Act 1993 s 3(1ZA)(b) (as so added)); (3) a person acting on behalf of that body (s 3(1ZA)(c) (as so added)); or (4) a person to whom that body has delegated any functions (s 3(1ZA)(d) (as so added)).

10 As to the meaning of 'family health service provider' see PARA 643 note 10.

11 As to the meaning of 'family health services' see PARA 643 note 10.

12 Health Service Commissioners Act 1993 s 3(1A)(a) (s 3(1A)-(1D) added by the Health Service Commissioners (Amendment) Act 1996 s 2(2)).

13 Health Service Commissioners Act 1993 s 3(1A)(b) (as added: see note 12).

14 Health Service Commissioners Act 1993 s 3(1A)(c) (as added: see note 12).

15 Health Service Commissioners Act 1993 s 3(1A)(d) (as added: see note 12).



16    Ie subject to the provisions of the Health Service Commissioners Act 1993.

17    Health Service Commissioners Act 1993 s 3(1A) (as added (see note 12); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 35(1), (2)).

18    As to the meaning of 'independent provider' see PARA 643 note 24.

19    Health Service Commissioners Act 1993 s 3(1C)(a) (as added: see note 12).

20    Health Service Commissioners Act 1993 s 3(1C)(b) (as added: see note 12).

21    Health Service Commissioners Act 1993 s 3(1C)(c) (as added: see note 12).

22    Ie subject to the provisions of the Health Service Commissioners Act 1993.

23    Health Service Commissioners Act 1993 s 3(1C) (as added (see note 12); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 35(1), (2)). Any failure or maladministration mentioned in the Health Service Commissioners Act 1993 s 3(1C) may arise from action of: (1) the independent provider (s 3(1D)(a) (as so added)); (2) a person employed by the provider (s 3(1D)(b) (as so added)); (3) a person acting on behalf of the provider (s 3(1D)(c) (as so added)); or (4) a person to whom the provider has delegated any functions (s 3(1D)(d) (as so added)).

24    Ie any function under the Health and Social Care (Community Health and Standards) Act 2003 s 113: see PARA 596.

25    Ie subject to the provisions of the Health Service Commissioners Act 1993.

26    Health Service Commissioners Act 1993 s 3(1E) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 118; and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 35(1), (2)).

27    The Health Service Commissioners Act 1993 s 3(1F) is added by the NHS Redress Act 2006 s 15(1), (2), as from a day to be appointed: see s 19(4). At the date at which this volume states the law no such day had been appointed.

28    Health Service Commissioners Act 1993 s 3(1F)(a) (as prospectively added: see note 27). A redress scheme is a scheme established under the NHS Redress Act 2006 s 1: see PARA 695.

29    Health Service Commissioners Act 1993 s 3(1F)(b) (as prospectively added: see note 27).

30    Ie under regulations made under the NHS Redress Act 2006 s 14: see PARA 707.

31 Health Service Commissioners Act 1993 s 3(1F)(c) (as prospectively added: see note 27).

32 Is subject to the provisions of the Health Service Commissioners Act 1993.

33 Health Service Commissioners Act 1993 s 3(1F) (as prospectively added: see note 27).

34 Health Service Commissioners Act 1993 s 3(2) (as amended: see note 9).

35 Health Service Commissioners Act 1993 s 3(3) (as amended: see note 9).

36 See the Health Service Commissioners Act 1993 s 3(4) (as amended: see note 9); s 3(5), (6) (both added by the Health Service Commissioners (Amendment) Act 1996 s 2(3); and as so amended). The Health Service Commissioners Act 1993 s 3(4)-(6) do not apply to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment: s 3(7) (added by the Health Service Commissioners (Amendment) Act 1996 s 6(2)).

37 Health Service Commissioners Act 1993 s 3(4).

38 Health Service Commissioners Act 1993 s 3(5)(a) (as added: see note 36).

39 Health Service Commissioners Act 1993 s 3(5)(b) (as added: see note 36).

40 Health Service Commissioners Act 1993 s 3(5)(c) (as added: see note 36).

41 Health Service Commissioners Act 1993 s 3(5)(d) (as added: see note 36).

42 Health Service Commissioners Act 1993 s 3(6)(a) (as added: see note 36).

43 Health Service Commissioners Act 1993 s 3(6)(b) (as added: see note 36).

44 Health Service Commissioners Act 1993 s 3(6)(c) (as added: see note 36).

45 Health Service Commissioners Act 1993 s 3(6)(d) (as added: see note 36).

## **UPDATE**

### **644 Matters subject to investigation: remit of Commissioner**

TEXT AND NOTE 19--After '(of whatever kind)' read ', or has undertaken to provide services in respect of which direct payments have been made under the National Health Service Act 2006 s 12(1) or (4)': Health Service Commissioners Act 1993 ss 3(1C), 19 (ss 2B(1A), added, s 19 amended by the Health Act 2009 s 12).

NOTE 34--The Health Service Commissioner is entitled to approach question of failure in service, even in context of clinical judgment, from point of view that is different from approach of courts in negligence actions: *R (on the application of Attwood) v Health Service Comr* [2008] EWHC 2315 (Admin), [2009] PTSR 1330, [2008] All ER (D) 40 (Oct).

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#### **645. Matters excluded from investigation.**

The Health Service Commissioner for England<sup>1</sup> must not conduct an investigation<sup>2</sup> in respect of action<sup>3</sup> in relation to which the person aggrieved<sup>4</sup> has or had: (1) a right of appeal, reference or review to or before a tribunal constituted by or under any enactment<sup>5</sup> or by virtue of Her Majesty's prerogative<sup>6</sup>; or (2) a remedy by way of proceedings in any court of law<sup>7</sup>, unless the Commissioner is satisfied that in the particular circumstances it is not reasonable to expect that person to resort or have resorted to it<sup>8</sup>. The Commissioner must not conduct an investigation in respect of action which has been, or is, the subject of an inquiry<sup>9</sup>.

Where: (a) action by reference to which a complaint is made<sup>10</sup> is action by reference to which a complaint can be made under certain statutory provisions<sup>11</sup> or under a procedure operated by a health service body<sup>12</sup>, a family health service provider<sup>13</sup> or an independent provider<sup>14</sup>; and (b) the above provisions<sup>15</sup> do not apply as regards the action<sup>16</sup>, the Commissioner must not conduct an investigation in respect of the action unless he is satisfied that<sup>17</sup> the other procedure has been invoked and exhausted<sup>18</sup>, or in the particular circumstances it is not reasonable to expect that procedure to be invoked or (as the case may be) exhausted<sup>19</sup>.

The Commissioner must not conduct an investigation in respect of action taken by a primary care trust<sup>20</sup> in the exercise of its functions<sup>21</sup>: (i) under the National Health Service (Service Committees and Tribunal) Regulations 1992<sup>22</sup>, or any instrument amending or replacing those regulations<sup>23</sup>; (ii) under regulations<sup>24</sup> relating to the provision of pharmaceutical services<sup>25</sup>.

The Commissioner must not conduct an investigation in respect of action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006<sup>26</sup>. The Commissioner must not conduct an investigation in respect of action taken in matters relating to contractual or other commercial transactions, except for<sup>27</sup>: (A) matters relating to NHS contracts<sup>28</sup>; (B) matters arising from arrangements between a health service body and an independent provider for the provision of services by the provider<sup>29</sup>; (C) matters arising from arrangements between a family health service provider and an independent provider for the provision of services by the independent provider<sup>30</sup>; and, as from a day to be appointed, (D) matters arising from settlement agreements entered into under a redress scheme<sup>31</sup>. The Commissioner must not conduct an investigation in pursuance of a complaint if<sup>32</sup>, the complaint is in respect of action taken in any matter relating to arrangements made by a health service body and a family health service provider for the provision of family health services<sup>33</sup>, the action is taken by or on behalf of the body or by the provider<sup>34</sup>, and the complaint is made by the provider or the body<sup>35</sup>. Nothing in the preceding provisions<sup>36</sup> prevents the Commissioner conducting an investigation in respect of action taken by a health service body in operating a procedure established to examine complaints<sup>37</sup>.

1 As to the Health Service Commissioner for England see PARA 641.

2 As to bodies and persons subject to investigation see PARA 643. As to matters subject to investigation see PARA 644.

3 As to the meaning of 'action' see PARA 644 note 7.

4 'Person aggrieved' means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in the Health Service Commissioners Act 1993 s 3(1), (1A) or (1C) (see PARA 644): s 19 (definition amended by the Health Service Commissioners (Amendment) Act 1996 s 3, Sch 1 para 6(6)). As to the meaning of 'person' see PARA 17 note 2.

5 As to the meaning of 'enactment' see PARA 10 note 7.

6 Health Service Commissioners Act 1993 s 4(1)(a). As to the Royal prerogative see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 367 et seq; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 46.

7 Health Service Commissioners Act 1993 s 4(1)(b).

8 Health Service Commissioners Act 1993 s 4(1) (amended by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 36(1), (2)).

9 Health Service Commissioners Act 1993 s 4(2) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 36(1), (2); the Scottish Public Services Ombudsman Act 2002 s 25(1), Sch 6 para 14). The inquiry referred to is one under the National Health Service Act 1977 s 84 (repealed).

10 Ie under the Health Service Commissioners Act 1993 s 3(1), (1A) or (1C): see PARA 644. As from a day to be appointed this provision also applies to a complaint made under s 3(1F)(a) or (b) (see PARA 644): see s 4(4) (a) (s 4(4)-(6) added by the Health Service Commissioners (Amendment) Act 1996 s 5; Health Service Commissioners Act 1993 s 4(4)(a) prospectively amended by the NHS Redress Act 2006 s 15(1), (3)(a)). At the date at which this volume states the law no such day had been appointed. As to complaints generally see PARA 646.

11 Ie under the Health and Social Care (Community Health and Standards) Act 2003 s 113(1) or (2): see PARA 596. As from a day to be appointed this provision also applies to complaints made under the NHS Redress Act 2006 s 14 (see PARA 707): see the Health Service Commissioners Act 1993 s 4(4)(a) (as added (see note 10); and prospectively amended by the NHS Redress Act 2006 s 15(1), (3)(b)). At the date at which this volume states the law no such day had been appointed.

12 As to the meaning of 'health service body' see PARA 643 note 1.

13 As to the meaning of 'family health service provider' see PARA 643 note 10.

14 Health Service Commissioners Act 1993 s 4(4)(a) (as added (see note 10); and amended by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 11(1), (2)). As to the meaning of 'independent provider' see PARA 643 note 24.

15 Ie the Health Service Commissioners Act 1993 s 4(1) or (2): see the text to notes 1-9.

16 Health Service Commissioners Act 1993 s 4(4)(b) (as added: see note 10).

17 Health Service Commissioners Act 1993 s 4(5) (as added (see note 10); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 36(1), (3)).

18 Health Service Commissioners Act 1993 s 4(5)(a) (as added: see note 10).

19 Health Service Commissioners Act 1993 s 4(5)(b) (as added: see note 10). Until a day to be appointed, the Hospital Complaints Procedure Act 1985 s 1(2) (see PARA 599) (which provides that no right of appeal etc conferred under s 1 of that Act is to preclude an investigation under the Health Service Commissioners Act 1993) has effect subject to s 4(5): s 4(6) (as so added; and prospectively repealed by the Health and Social Care (Community Health and Standards) Act 2003 s 196, Sch 14 Pt 2). At the date at which this volume states the law no such day had been appointed.

20 As to primary care trusts see PARA 111.

21 As to the meaning of 'functions' see PARA 642 note 7.

22 Ie the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664: see PARA 619 et seq.

23 Health Service Commissioners Act 1993 s 6(3) (amended by the National Health Service Reform and Health Care Professions Act 2002 s 2(5), Sch 2 Pt 2 para 61(1), (3); the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 37).

24 Ie made under the National Health Service Act 2006 s 126 or s 129 by virtue of the Health and Medicines Act 1988 s 17 (investigations of matters relating to services): see PARAS 339, 340.

25 Health Service Commissioners Act 1993 s 6(5) (added by the Health Service Commissioners (Amendment) Act 1996 s 7(3); and amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 2 para 61(1), (3); the Health and Social Care (Community Health and Standards) Act 2003 ss 184, 196, Sch 11 paras 60, 63(a), Sch 14 Pt 4; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 37, Sch 7; the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 165, 167).

26 Health Service Commissioners Act 1993 s 7(1) (amended by the Government of Wales Act 1998 s 112, Sch 10 para 6; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 38(1), (2); the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 165, 168(a)). Her Majesty may by Order in Council amend the Health Service Commissioners Act 1993 s 7 so as to permit the investigation by the Commissioner of any of the matters mentioned in s 7(1) or (2) (see the text to notes 27-31): s 7(4) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 38(1), (6)). A statutory instrument containing such an Order in Council must be subject to annulment in pursuance of a resolution of either House of Parliament: Health Service Commissioners Act 1993 s 7(5). At the date at which this volume states the law no such order had been made.

27 Health Service Commissioners Act 1993 s 7(2) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 38(1), (3)). See also note 26.

28 Health Service Commissioners Act 1993 s 7(2)(a) (amended by the Health Service Commissioners (Amendment) Act 1996 ss 3, 13, Sch 1 para 2(2), Sch 2; SI 2004/1823). As to the meaning of 'NHS contract' see PARA 228: definition applied by the Health Service Commissioners Act 1993 s 7(2)(a) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 165, 168(b)).

29 Health Service Commissioners Act 1993 s 7(2)(b) (amended by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 2(3)). In determining what matters arise from such arrangements the Commissioner must disregard any arrangements for the provision of services at an establishment maintained by a Minister of the Crown mainly for patients who are members of the armed forces of the Crown: Health Service Commissioners Act 1993 s 7(3) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 38(1), (4)). 'Patient' includes an expectant or nursing mother and a lying-in woman: Health Service Commissioners Act 1993 s 19.

30 Health Service Commissioners Act 1993 s 7(2)(c) (added by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 2(4)).

31 Health Service Commissioners Act 1993 s 7(2)(d) (prospectively added by the NHS Redress Act 2006 s 15(1), (4)(b)). At the date at which this volume states the law no such day had been appointed. A redress scheme is a scheme established under the NHS Redress Act 2006 s 1: see PARA 695.

32 Health Service Commissioners Act 1993 s 7(3A) (s 7(3A), (3B) added by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 2(5); Health Service Commissioners Act 1993 s 7(3A) amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 38(1), (5)).

33 Health Service Commissioners Act 1993 s 7(3A)(a) (as added: see note 32). As to the meaning of 'family health services' see PARA 643 note 10.

34 Health Service Commissioners Act 1993 s 7(3A)(b) (as added: see note 32).

35 Health Service Commissioners Act 1993 s 7(3A)(c) (as added: see note 32).

36 Ie nothing in the Health Service Commissioners Act 1993 s 7(1)-(3A): see the text to notes 26-35.

37 Health Service Commissioners Act 1993 s 7(3B) (as added (see note 32); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 38(1), (6)).

## **UPDATE**

### **645 Matters excluded from investigation**

TEXT AND NOTE 25--Health Service Commissioners Act 1993 s 6(5) further amended: Health Act 2006 Sch 8 para 34.

TEXT AND NOTE 31--Add head (E) matters arising from arrangements for the provision of services in respect of which direct payments have been made under the National Health Service Act 2006 s 12(1) or (4): Health Service Commissioners Act 1993 ss 7(2) (aa), 19 (ss 7(2)(aa) added, s 19 amended by the Health Act 2009 s 12).

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## 646. Complaints.

A complaint may be made by an individual or a body of persons<sup>1</sup>, whether incorporated or not, other than a public authority<sup>2</sup>. A complaint must be made in writing<sup>3</sup>. The complaint must not be entertained unless it is made: (1) by the person aggrieved<sup>4</sup>; (2) where the person by whom a complaint might have been made has died or is for any reason unable to act for himself, by his personal representative<sup>5</sup>, a member of his family<sup>6</sup>, or some body or individual suitable to represent him<sup>7</sup>; or (3) if it is made more than a year after the day on which the person aggrieved first had notice of the matters alleged in the complaint, unless the Health Service Commissioner for England<sup>8</sup> considers it reasonable to do so<sup>9</sup>.

A health service body<sup>10</sup> may itself refer to the Commissioner a complaint made to that body that a person has, in consequence of a failure or maladministration for which the body is responsible, sustained injustice or hardship<sup>11</sup>. A complaint may not be so referred unless it was made: (a) in writing<sup>12</sup>; (b) by the person aggrieved or by a person authorised<sup>13</sup> to complain to the Commissioner on his behalf<sup>14</sup>; and (c) not more than a year after the person aggrieved first had notice of the matters alleged in the complaint, or such later date as the Commissioner considers appropriate in any particular case<sup>15</sup>. A health service body may not so refer a complaint after the period of one year beginning with the day on which the body received the complaint<sup>16</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 Health Service Commissioners Act 1993 s 8(1). 'Public authority' means: (1) a local authority or other authority or body constituted for the purposes of the public service or of local government (including the National Assembly for Wales) (s 8(2)(a) (amended by the Government of Wales Act 1998 s 112, Sch 10 para 7(a))); (2) an authority or body constituted for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking (Health Service Commissioners Act 1993 s 8(2)(b)); and (3) any other authority or body (a) whose members are appointed by Her Majesty or any Minister of the Crown or government department or by the National Assembly for Wales (s 8(2)(c)(i) (amended by the Government of Wales Act 1998 Sch 10 para 7(b))); or (b) whose revenues consist wholly or mainly of money provided by Parliament or the National Assembly for Wales or out of the Scottish Consolidated Fund (Health Service Commissioners Act 1993 s 8(2)(c)(ii) (amended by SI 1999/1820; the Government of Wales Act 1998 Sch 10 para 7(b))). 'Local authority' means in relation to England a county, district or London borough council or the Common Council of the City of London; and in relation to Wales, a county council or county borough council: Health Service Commissioners Act 1993 s 19 (definition amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 108, Sch 18; the Scottish Public Services Ombudsman Act 2002 s 25(1), Sch 6 para 14). As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

3 Health Service Commissioners Act 1993 s 9(2). As to the meaning of 'writing' see PARA 7 note 2.

4 Health Service Commissioners Act 1993 s 9(3)(a). As to the meaning of 'person aggrieved' see PARA 645 note 4.



5 Health Service Commissioners Act 1993 s 9(3)(b)(i). As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.

6 Health Service Commissioners Act 1993 s 9(3)(b)(ii).

7 Health Service Commissioners Act 1993 s 9(3)(b)(iii).

8 As to the Health Service Commissioner for England see PARA 641.

9 See the Health Service Commissioners Act 1993 s 9(4). In the case of a complaint against a person who is no longer of a description set out in s 2A(1) (see PARA 643), but was of such a description at the time of the action complained of, the Commissioner must not entertain the complaint if it is made more than three years after the last day on which the person was a family health service provider: s 9(4A) (s 9(4A), (4B) added by the Health Service Commissioners (Amendment) Act 2000 s 2; Health Service Commissioners Act 1993 s 9(4A) amended by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 39(1), (3)). In the case of a complaint against a person falling within the Health Service Commissioners Act 1993 s 2B(1) (see PARA 643) in relation to whom there are no longer any such arrangements as are mentioned there, the Commissioner must not entertain the complaint if it is made more than three years after the last day on which the person was an independent provider: s 9(4B) (as so added; and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 39(1), (4)). As to the meaning of 'action' see PARA 644 note 7. As to the meaning of 'family health service provider' see PARA 643 note 10. As to the meaning of 'independent provider' see PARA 643 note 24.

10 As to the meaning of 'health service body' see PARA 643 note 1.

11 Health Service Commissioners Act 1993 s 10(1) (s 10(1), (4), (5) amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 40(1), (2)). The injustice or hardship referred to is such as is mentioned in the Health Service Commissioners Act 1993 s 3(1) (see PARA 644): s 10(1). Any question whether a complaint has been duly referred to the Commissioner under s 10 must be determined by him: s 10(4) (as so amended). A complaint referred to the Commissioner under s 10 is deemed to be duly made to him: s 10(5) (as so amended).

12 Health Service Commissioners Act 1993 s 10(2)(a).

13 Ie by the Health Service Commissioners Act 1993 s 9(3)(b): see the text to notes 5-7.

14 Health Service Commissioners Act 1993 s 10(2)(b).

15 Health Service Commissioners Act 1993 s 10(2)(c).

16 Health Service Commissioners Act 1993 s 10(3).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(vii) The Health Service Commissioner for England/647. Investigations.

#### **647. Investigations.**

Where the Health Service Commissioner for England<sup>1</sup> proposes to conduct an investigation pursuant to a complaint regarding a health service body<sup>2</sup>, he must afford to the health service body concerned<sup>3</sup>, and to any other person<sup>4</sup> who is alleged in the complaint to have taken or authorised the action<sup>5</sup> complained of<sup>6</sup>, an opportunity to comment on any allegations contained in the complaint<sup>7</sup>. Where the Commissioner proposes to conduct an investigation: (1) pursuant to a complaint regarding a family health service provider<sup>8</sup>, he must afford a similar opportunity<sup>9</sup> to the family health service provider<sup>10</sup>, and to any person by reference to whose action the complaint is made (if different from the family health service provider)<sup>11</sup>; (2) pursuant to a complaint regarding an independent provider<sup>12</sup>, he must afford such an opportunity<sup>13</sup> to the independent provider concerned<sup>14</sup>, and to any other person who is alleged in the complaint to have taken or authorised the action complained of<sup>15</sup>; or (3) pursuant to a complaint regarding a person or body in respect of the exercise of any function relating to the handling and consideration of complaints<sup>16</sup> or, as from a day to be appointed, a redress scheme<sup>17</sup>, he must afford such an opportunity to the person or body whose maladministration is complained of<sup>18</sup>.

An investigation must be conducted in private<sup>19</sup>. In other respects, the procedure for conducting an investigation is such as the Commissioner considers appropriate in the circumstances of the case<sup>20</sup>; and in particular he may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit<sup>21</sup>, and he may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation<sup>22</sup>. The Commissioner may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or supplies information for the purposes of an investigation<sup>23</sup> sums in respect of expenses properly incurred by them<sup>24</sup>, and allowances by way of compensation for the loss of their time<sup>25</sup>.

The conduct of an investigation pursuant to a complaint regarding a health service body, family health service provider or independent provider, does not affect any action taken by the body or provider concerned, or any power or duty of that body or provider to take further action with respect to any matters subject to the investigation<sup>26</sup>.

Where the person aggrieved<sup>27</sup> has been removed from the United Kingdom<sup>28</sup> under any order in force under the Immigration Act 1971<sup>29</sup> he must, if the Commissioner so directs, be permitted to re-enter and remain in the United Kingdom, subject to such conditions as the Secretary of State<sup>30</sup> may direct, for the purposes of the investigation<sup>31</sup>.

1 As to the Health Service Commissioner for England see PARA 641.

2 I.e. a complaint under the Health Service Commissioners Act 1993 s 3(1): see PARA 644. As to the meaning of 'health service body' see PARA 643 note 1.

3 Health Service Commissioners Act 1993 s 11(1)(a).

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the meaning of 'action' see PARA 644 note 7.

6 Health Service Commissioners Act 1993 s 11(1)(b).

7 Health Service Commissioners Act 1993 s 11(1) (amended by the Health Service Commissioners (Amendment) Act 1996 s 3, Sch 1 para 3(2); the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 41(1), (2)).

8 Is a complaint under the Health Service Commissioners Act 1993 s 3(1A): see PARA 644. As to the meaning of 'family health service provider' see PARA 643 note 10.

9 See the Health Service Commissioners Act 1993 s 11(1A) (s 11(1A), (1B), (5A): added by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 3(3), (5); Health Service Commissioners Act 1993 s 11(1A), (1B) amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 41(1), (2)).

10 Health Service Commissioners Act 1993 s 11(1A)(a) (as added: see note 9).

11 Health Service Commissioners Act 1993 s 11(1A)(b) (as added: see note 9).

12 Is a complaint under the Health Service Commissioners Act 1993 s 3(1C): see PARA 644. As to the meaning of 'independent provider' see PARA 643 note 24.

13 See the Health Service Commissioners Act 1993 s 11(1B) (as added and amended: see note 9).

14 Health Service Commissioners Act 1993 s 11(1B)(a) (as added: see note 9).

15 Health Service Commissioners Act 1993 s 11(1B)(b) (as added: see note 9).

16 Is a complaint under the Health Service Commissioners Act 1993 s 3(1E): see PARA 644.

17 Is a complaint under the Health Service Commissioners Act 1993 s 3(1F) (see PARA 644): see the Health Service Commissioners Act 1993 s 11(1C) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 11(1), (3); and prospectively amended by the NHS Redress Act 2006 s 15(1), (5)). At the date at which this volume states the law no day had been appointed.

18 See the Health Service Commissioners Act 1993 s 11(1C) (as added (see note 17); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 41(1), (2)).

19 Health Service Commissioners Act 1993 s 11(2).

20 Health Service Commissioners Act 1993 s 11(3). The Commissioner's functions are limited to the investigation of complaints and he has no power of investigation at large. He may not expand the ambit of a complaint beyond what it contains, nor expand his investigation of it beyond what the complaint warrants: *R (on the application of Redmond) v Health Service Comr*, *R (on the application of Cavanagh) v Health Service Comr*, *R (on the application of Bhatt) v Health Service Comr* [2005] EWCA Civ 1578, [2006] 3 All ER 543, [2006] 1 FCR 7. As to the Commissioner's powers with regard to evidence see PARA 648. As to offences relating to investigations see PARA 649. As to reports following investigations see PARA 650.

21 Health Service Commissioners Act 1993 s 11(3)(a). As to matters relating to information see PARAS 651-653.

22 Health Service Commissioners Act 1993 s 11(3)(b).

23 Health Service Commissioners Act 1993 s 11(4) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 41(1), (3)(a)). Payments made by the Commissioner must be in accordance with such scales and subject to such conditions as may be determined by the Treasury: Health Service Commissioners Act 1993 s 11(4) (amended by the Government of Wales Act 1998 s 112, Sch 10 para 9; SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 41(1), (3)(b), (c), Sch 7). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

24 Health Service Commissioners Act 1993 s 11(4)(a).

25 Health Service Commissioners Act 1993 s 11(4)(b).

26 See the Health Service Commissioners Act 1993 s 11(5) (amended by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 3(4)); Health Service Commissioners Act 1993 s 11(5A) (as added: see note 9).

27 As to the meaning of 'person aggrieved' see PARA 645 note 4.

28 As to the meaning of 'United Kingdom' see PARA 15 note 8.

29 As to the Immigration Act 1971 see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 83 et seq.

30 As to the Secretary of State see PARA 6 note 8.

31 Health Service Commissioners Act 1993 s 11(6).

## UPDATE

### 647 Investigations

NOTE 20--The Health Service Commissioner is entitled to approach question of failure in service, even in context of clinical judgment, from point of view that is different from approach of courts in negligence actions: *R (on the application of Attwood) v Health*

*Service Comr* [2008] EWHC 2315 (Admin), [2009] PTSR 1330, [2008] All ER (D) 40 (Oct).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(vii) The Health Service Commissioner for England/648. Evidence.

#### **648. Evidence.**

For the purposes of an investigation<sup>1</sup> pursuant to a complaint regarding a health service body<sup>2</sup>, the Health Service Commissioner for England<sup>3</sup> may require any officer<sup>4</sup> or member of the health service body concerned or any other person<sup>5</sup> who in his opinion is able to supply information or produce documents relevant to the investigation to supply any such information or produce any such document<sup>6</sup>. For the purposes of an investigation pursuant to other complaints<sup>7</sup>, the Commissioner may require any person who in his opinion is able to supply information or produce documents relevant to the investigation to supply any such information or produce any such document<sup>8</sup>.

For the purposes of an investigation the Commissioner has the same powers as the court<sup>9</sup> in respect of<sup>10</sup> the attendance and examination of witnesses (including the administration of oaths and affirmations<sup>11</sup> and the examination of witnesses abroad)<sup>12</sup>, and the production of documents<sup>13</sup>. No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service, whether imposed by any enactment<sup>14</sup> or by any rule of law, applies to the disclosure of information for the purposes of an investigation<sup>15</sup>. The Crown<sup>16</sup> is not entitled in relation to an investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings<sup>17</sup>. Subject to these provisions<sup>18</sup>, no person may be compelled for the purposes of an investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the court<sup>19</sup>.

No person is required or authorised to supply any information or answer any question relating to proceedings of the Cabinet or of any Committee of the Cabinet<sup>20</sup>, or to produce so much of any document as relates to such proceedings<sup>21</sup>; and for these purposes a certificate issued by the Secretary of the Cabinet<sup>22</sup> with the approval of the Prime Minister<sup>23</sup> and certifying that any information, question, document or part of a document relates to such proceedings is conclusive<sup>24</sup>.

1 As to investigations see PARA 647.

2 I.e. a complaint under the Health Service Commissioners Act 1993 s 3(1): see PARA 644. As to the meaning of 'health service body' see PARA 643 note 1.

3 As to the Health Service Commissioner for England see PARA 641.

4 As to the meaning of 'officer' see PARA 642 note 2.

5 As to the meaning of 'person' see PARA 17 note 2.

6 Health Service Commissioners Act 1993 s 12(1) (amended by the Health Service Commissioners (Amendment) Act 1996 s 3, Sch 1 para 4(2); the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6

paras 27, 42). As to offences relating to investigations see **PARA 649**. As to further matters relating to information see **PARAS 651-653**.

7 The complaints under the Health Service Commissioners Act 1993 s 3(1A), (1C) or (1E): see **PARA 644**. As from a day to be appointed this provision also applies to a complaint under s 3(1F): see s 12(1A) (added by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 4(3); and prospectively amended by the NHS Redress Act 2006 s 15(1), (6)). At the date at which this volume states the law no such day had been appointed.

8 Health Service Commissioners Act 1993 s 12(1A) (as added (see note 7); and amended by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 11(1), (4), the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 42).

9 'Court' means, in relation to England and Wales, the High Court; and in relation to Northern Ireland, the High Court in Northern Ireland: Health Service Commissioners Act 1993 s 19 (definition amended by SI 2004/1823). As to the High Court of Justice in England and Wales see **COURTS** vol 10 (Reissue) **PARA 602** et seq. As to the meanings of 'England' and 'Wales' see **PARA 6** note 2.

10 Health Service Commissioners Act 1993 s 12(2) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 42).

11 As to oaths and affirmations see **CIVIL PROCEDURE** vol 11 (2009) **PARA 1021** et seq.

12 Health Service Commissioners Act 1993 s 12(2)(a). As to witnesses see **CIVIL PROCEDURE** vol 11 (2009) **PARA 966** et seq.

13 Health Service Commissioners Act 1993 s 12(2)(b). As to documentary evidence see **CIVIL PROCEDURE** vol 11 (2009) **PARA 864** et seq.

14 As to the meaning of 'enactment' see **PARA 10** note 7.

15 Health Service Commissioners Act 1993 s 12(3).

16 As to the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) **PARA 353**.

17 Health Service Commissioners Act 1993 s 12(4).

18 The subject to the Health Service Commissioners Act 1993 s 12(3) and (4): see the text to notes 15-17.

19 Health Service Commissioners Act 1993 s 12(6). As to evidence in civil proceedings see **CIVIL PROCEDURE** vol 11 (2009) **PARA 758** et seq. As to the production of documents in civil proceedings see **CIVIL PROCEDURE** vol 11 (2009) **PARA 538** et seq.

20 Health Service Commissioners Act 1993 s 12(5)(a). As to the Cabinet see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) **PARAS 401-413**.

- 21 Health Service Commissioners Act 1993 s 12(5)(b).
- 22 As to the Secretary of the Cabinet see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 427.
- 23 As to the Prime Minister see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 394-398.
- 24 Health Service Commissioners Act 1993 s 12(5). As to conclusive evidence see **CIVIL PROCEDURE** vol 11 (2009) PARA 767.



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#### **649. Obstruction and contempt.**

The Health Service Commissioner for England<sup>1</sup> may certify an offence to the court<sup>2</sup> where<sup>3</sup>: (1) a person<sup>4</sup> without lawful excuse obstructs him or any of his officers<sup>5</sup> in the performance of his functions<sup>6</sup>; or (2) a person is guilty of any act or omission in relation to an investigation<sup>7</sup> which, if that investigation were a proceeding in the court, would constitute contempt of court<sup>8</sup>.

Where an offence is so certified the court may inquire into the matter and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence<sup>9</sup>, and any statement that may be offered in defence<sup>10</sup>, the court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the like offence in relation to the court<sup>11</sup>.

1 As to the Health Service Commissioner for England see PARA 641.

2 As to the meaning of 'court' see PARA 648 note 9.

3 Health Service Commissioners Act 1993 s 13(1) (amended by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 43). Nothing in the Health Service Commissioners Act 1993 s 13 is to be construed as applying to the taking of any such action as is mentioned in s 11(5) (see PARA 647): s 13(3).

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the meaning of 'officer' see PARA 642 note 2.

6 Health Service Commissioners Act 1993 s 13(1)(a). As to the meaning of 'functions' see PARA 642 note 7.

7 As to investigations see PARA 647.

8 Health Service Commissioners Act 1993 s 13(1)(b). As to contempt of court see **CONTEMPT OF COURT**.

9 Health Service Commissioners Act 1993 s 13(2)(a).

10 Health Service Commissioners Act 1993 s 13(2)(b).

11 Health Service Commissioners Act 1993 s 13(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(10) HEALTH CARE QUALITY AND STANDARDS/(vii) The Health Service Commissioner for England/650. Reports.

## **650. Reports.**

In any case where the Health Service Commissioner for England<sup>1</sup> conducts an investigation pursuant to a complaint regarding a health service body<sup>2</sup> he must send a report of the results of the investigation to<sup>3</sup>: (1) the person<sup>4</sup> who made the complaint<sup>5</sup>; (2) any member of the House of Commons who to the Commissioner's knowledge assisted in the making of the complaint (or if he is no longer a member, such other member as the Commissioner thinks appropriate)<sup>6</sup>; (3) the health service body who at the time the report is made provides the service, or has the function<sup>7</sup>, in relation to which the complaint was made<sup>8</sup>; (4) any person who is alleged in the complaint to have taken or authorised the action complained of<sup>9</sup>; and (5) the Secretary of State<sup>10</sup>. In any case where the Commissioner decides not to conduct such an investigation he must send a statement of his reasons<sup>11</sup> to the person who made the complaint<sup>12</sup>, and to any such member of the House of Commons as is mentioned in head (2) above<sup>13</sup>.

In any case where the Commissioner conducts an investigation pursuant to a complaint regarding a family health service provider<sup>14</sup> he must send a report of the results of the investigation to<sup>15</sup>: (a) the person who made the complaint<sup>16</sup>; (b) any member of the House of Commons who to the Commissioner's knowledge assisted in the making of the complaint (or if he is no longer a member, such other member as the Commissioner thinks appropriate)<sup>17</sup>; (c) any person by reference to whose action the complaint is made<sup>18</sup>; (d) the family health service provider (if he does not fall within head (c) above)<sup>19</sup>; (e) any health service body with whom the family health service provider is subject to an undertaking to provide family health services<sup>20</sup>; and (f) the Secretary of State<sup>21</sup>. In any case where the Commissioner decides not to conduct such an investigation he must send a statement of his reasons<sup>22</sup> to the person who made the complaint<sup>23</sup>, and to any such member of the House of Commons as is mentioned in head (b) above<sup>24</sup>.

In any case where the Commissioner conducts an investigation regarding an independent provider<sup>25</sup> he must send a report of the results of the investigation to<sup>26</sup>: (i) the person who made the complaint<sup>27</sup>; (ii) any member of the House of Commons who to the Commissioner's knowledge assisted in the making of the complaint (or if he is no longer a member, such other member as the Commissioner thinks appropriate)<sup>28</sup>; (iii) any person who is alleged in the complaint to have taken or authorised the action complained of<sup>29</sup>; (iv) the independent provider<sup>30</sup>; (v) the health service body or family health service provider with whom the independent provider made the arrangement to provide the service concerned<sup>31</sup>; and (vi) the Secretary of State<sup>32</sup>. In any case where the Commissioner decides not to conduct such an investigation he must send a statement of his reasons<sup>33</sup> to the person who made the complaint<sup>34</sup>, and to any such member of the House of Commons as is mentioned in head (ii) above<sup>35</sup>.

In any case where the Commissioner conducts an investigation regarding any person or body in the exercise of any function relating to the handling and consideration of complaints about health care<sup>36</sup> he must send a report of the results of the investigation to<sup>37</sup>: (A) the person who made the complaint<sup>38</sup>; (B) any member of the House of Commons who to the Commissioner's knowledge assisted in the making of the complaint (or if he is no longer a member, such other member as the Commissioner thinks appropriate)<sup>39</sup>; (C) the person or body whose maladministration is complained of<sup>40</sup>; (D) any person or body whose action was complained of in the complaint made to the person or body whose maladministration is complained of<sup>41</sup>; (E) the Secretary of State<sup>42</sup>. In any case where the Commissioner decides not to conduct such an

investigation he must send a statement of his reasons<sup>43</sup> to the person who made the complaint<sup>44</sup>, or to any such member of the House of Commons as is mentioned in head (b) above<sup>45</sup>.

As from a day to be appointed<sup>46</sup>, in any case where the Commissioner conducts an investigation pursuant to a complaint regarding a redress scheme<sup>47</sup> he must send a report of the results of the investigation to: (aa) the person who made the complaint<sup>48</sup>; (bb) any member of the House of Commons who to the Commissioner's knowledge assisted in the making of the complaint (or if he is no longer a member, such other member as the Commissioner thinks appropriate)<sup>49</sup>; (cc) the person or body whose maladministration is complained of<sup>50</sup>; (dd) in the case of a complaint about maladministration in connection with a redress scheme<sup>51</sup>, any person or body whose action was complained of in the complaint made to the person or body whose maladministration is complained of<sup>52</sup>; and (ee) the Secretary of State<sup>53</sup>. In any case where the Commissioner decides not to conduct such an investigation he must send a statement of his reasons to the person who made the complaint<sup>54</sup>, and to any member of the House of Commons as is mentioned in head (bb) above<sup>55</sup>.

If after conducting an investigation it appears to the Commissioner that the person aggrieved<sup>56</sup> has sustained injustice or hardship<sup>57</sup>, and the injustice or hardship has not been and will not be remedied<sup>58</sup>, he may if he thinks fit lay before each House of Parliament a special report on the case<sup>59</sup>.

The Commissioner<sup>60</sup> must annually lay before each House of Parliament a general report on the performance of his functions<sup>61</sup>, and may from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit<sup>62</sup>.

For the purposes of the law of defamation, the publication of any matter by the Commissioner in sending or making a report or statement is absolutely privileged<sup>63</sup>.

1 As to the Health Service Commissioner for England see PARA 641.

2 I.e. a complaint under the Health Service Commissioners Act 1993 s 3(1): see PARA 644. As to the meaning of 'health service body' see PARA 643 note 1. As to investigations see PARA 647.

3 Health Service Commissioners Act 1993 s 14(1) (amended by the Health Service Commissioners (Amendment) Act 1996 s 3, Sch 1 para 5(2); the Government of Wales Act 1998 s 112, Sch 10 para 10(2); SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 45(1), (2)).

4 As to the meaning of 'person' see PARA 17 note 2.

5 Health Service Commissioners Act 1993 s 14(1)(a). As to complaints see PARA 646.

6 Health Service Commissioners Act 1993 s 14(1)(b) (amended by SI 2004/1823).

7 As to the meaning of 'functions' see PARA 642 note 7.

8 Health Service Commissioners Act 1993 s 14(1)(c) (substituted by the Health Service Commissioners (Amendment) Act 1996 s 10(2)).

9 Health Service Commissioners Act 1993 s 14(1)(d).

10 Health Service Commissioners Act 1993 s 14(1)(e) (substituted by the Health Authorities Act 1995 s 2(1), Sch 1 para 126(4)(b)). As to the Secretary of State see PARA 6 note 8.

11 Health Service Commissioners Act 1993 s 14(2) (amended by the Health Service Commissioners (Amendment) Act 1996 s 3, Sch 1 para 5(3); the Government of Wales Act 1998 Sch 10 para 10(2); SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 45(1), (2)).

12 Health Service Commissioners Act 1993 s 14(2)(a).

13 Health Service Commissioners Act 1993 s 14(2)(b) (amended by the Health Service Commissioners (Amendment) Act 1996 s 10(3)(a); SI 1999/1820; SI 2004/1823).

14 Is a complaint under the Health Service Commissioners Act 1993 s 3(1A): see PARA 644. As to the meaning of 'family health service provider' see PARA 643 note 10.

15 Health Service Commissioners Act 1993 s 14(2A) (s 14(2A)-(2D) added by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 5(4); and amended by the Government of Wales Act 1998 Sch 10, para 10(2); SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 45(1), (2)).

16 Health Service Commissioners Act 1993 s 14(2A)(a) (as added: see note 15).

17 Health Service Commissioners Act 1993 s 14(2A)(b) (as added: see note 15; and amended by SI 1999/1820; SI 2004/1823).

18 Health Service Commissioners Act 1993 s 14(2A)(c) (as added: see note 15).

19 Health Service Commissioners Act 1993 s 14(2A)(d) (as added: see note 15).

20 Health Service Commissioners Act 1993 s 14(2A)(e) (as added: see note 15). As to the meaning of 'family health services' see PARA 643 note 10.

21 Health Service Commissioners Act 1993 s 14(2A)(f) (as added: see note 15).

22 Health Service Commissioners Act 1993 s 14(2B) (as added and amended: see note 15).

23 Health Service Commissioners Act 1993 s 14(2B)(a) (as added: see note 15).

24 Health Service Commissioners Act 1993 s 14(2B)(b) (as added (see note 15); and amended by SI 1999/1820; SI 2004/1823).

25    le a complaint under the Health Service Commissioners Act 1993 s 3(1C): see PARA 644. As to the meaning of 'independent provider' see PARA 643 note 24.

26    Health Service Commissioners Act 1993 s 14(2C) (as added and amended: see note 15).

27    Health Service Commissioners Act 1993 s 14(2C)(a) (as added: see note 15).

28    Health Service Commissioners Act 1993 s 14(2C)(b) (as added (see note 15); and amended by SI 1999/1820; SI 2004/1823).

29    Health Service Commissioners Act 1993 s 14(2C)(c) (as added: see note 15).

30    Health Service Commissioners Act 1993 s 14(2C)(d) (as added: see note 15).

31    Health Service Commissioners Act 1993 s 14(2C)(e) (as added: see note 15).

32    Health Service Commissioners Act 1993 s 14(2C)(f) (as added: see note 15).

33    Health Service Commissioners Act 1993 s 14(2D) (as added and amended: see note 15).

34    Health Service Commissioners Act 1993 s 14(2D)(a) (as added: see note 15).

35    Health Service Commissioners Act 1993 s 14(2D)(b) (as added (see note 15); and amended by SI 1999/1820; SI 2004/1823).

36    le a complaint under the Health Service Commissioners Act 1993 s 3(1E): see PARA 644.

37    Health Service Commissioners Act 1993 s 14(2E) (s 14(2E), (2F) added by the Health and Social Care (Community Health and Standards) Act 2003 s 147, Sch 9 para 11(1), (5); and amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 45(1), (2)).

38    Health Service Commissioners Act 1993 s 14(2E)(a) (as added: see note 37).

39    Health Service Commissioners Act 1993 s 14(2E)(b) (as added: see note 37).

40    Health Service Commissioners Act 1993 s 14(2E)(c) (as added: see note 37).

41    Health Service Commissioners Act 1993 s 14(2E)(d) (as added: see note 37).

- 42 Health Service Commissioners Act 1993 s 14(2E)(e) (as added: see note 37).
- 43 Health Service Commissioners Act 1993 s 14(2F) (as added and amended: see note 37).
- 44 Health Service Commissioners Act 1993 s 14(2F)(a) (as added: see note 37).
- 45 Health Service Commissioners Act 1993 s 14(2F)(b) (as added: see note 37).
- 46 The Health Service Commissioners Act 1993 s 14(2G), (2H) are added by the NHS Redress Act 2006 s 15(1), (7) as from a day to be appointed: see s 19(4). At the date at which this volume states the law no such day had been appointed.
- 47 Is a complaint under the Health Service Commissioners Act 1993 s 3(1F): see PARA 644.
- 48 Health Service Commissioners Act 1993 s 14(2G)(a) (as prospectively added: see note 46).
- 49 Health Service Commissioners Act 1993 s 14(2G)(b) (as prospectively added: see note 46).
- 50 Health Service Commissioners Act 1993 s 14(2G)(c) (as prospectively added: see note 46).
- 51 Is a complaint under the Health Service Commissioners Act 1993 s 3(1F)(c): see PARA 644.
- 52 Health Service Commissioners Act 1993 s 14(2G)(d) (as prospectively added: see note 46).
- 53 Health Service Commissioners Act 1993 s 14(2G)(e) (as prospectively added: see note 46).
- 54 Health Service Commissioners Act 1993 s 14(2H)(a) (as prospectively added: see note 46).
- 55 Health Service Commissioners Act 1993 s 14(2H)(b) (as prospectively added: see note 46).
- 56 As to the meaning of 'person aggrieved' see PARA 645 note 4.
- 57 Health Service Commissioners Act 1993 s 14(3)(a) (amended by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 5(5)). The injustice or hardship referred to is such as is mentioned in the Health Service Commissioners Act 1993 s 3(1), (1A) or (1C): see PARA 644.
- 58 Health Service Commissioners Act 1993 s 14(3)(b).
- 59 Health Service Commissioners Act 1993 s 14(3) (amended by the Health Service Commissioners (Amendment) Act 1993 s 10(4); the Government of Wales Act 1998 Sch 10 para 10(2); SI 2004/1823; the Public

Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 45(1), (2)). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

60 Health Service Commissioners Act 1993 s 14(4) (s 14 substituted by the Health Service Commissioners (Amendment) Act 1996 s 10(5); and amended by the Government of Wales Act 1998 Sch 10 para 10(3)(a), SI 2004/1823, the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 45(1), (3)).

61 Health Service Commissioners Act 1993 s 14(4)(a) (as substituted (see note 60); and amended by the Government of Wales Act 1998 Sch 10 para 10(3)(b), SI 2004/1823).

62 Health Service Commissioners Act 1993 s 14(4)(b) (as substituted (see note 60); and amended by the Government of Wales Act 1998 Sch 10 para 10(3)(b), SI 2004/1823).

63 Health Service Commissioners Act 1993 s 14(5) (amended by the Government of Wales Act 1998 Sch 10 para 10(2); SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 45(1), (2)). As to absolute privilege see **LIBEL AND SLANDER** vol 28 (Reissue) para 94 et seq.

## **UPDATE**

### **650 Reports**

NOTE 31--Health Service Commissioners Act 1993 s 14(2C)(e) amended: Health Act 2009 s 12.

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## **651. Confidentiality of information.**

Information obtained by the Health Service Commissioner for England<sup>1</sup> or his officers<sup>2</sup> in the course of or for the purposes of an investigation<sup>3</sup> must not be disclosed except<sup>4</sup>: (1) for the purposes of the investigation and any report to be made in respect of it<sup>5</sup>; (2) for the purposes of a matter which is being investigated by the Parliamentary Commissioner for Administration<sup>6</sup> or a Local Commissioner<sup>7</sup> (or both)<sup>8</sup>; (3) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1989<sup>9</sup> alleged to have been committed in respect of information obtained<sup>10</sup> by the Commissioner or any of his officers<sup>11</sup>; (4) for the purposes of any proceedings for an offence of perjury alleged to have been committed in the course of the investigation<sup>12</sup>; (5) for the purposes of an inquiry with a view to the taking of such proceedings as are mentioned in heads (3) and (4) above<sup>13</sup>; (6) for the purposes of any proceedings<sup>14</sup> relating to offences of obstruction and contempt<sup>15</sup>; or (7) where the information is to the effect that any person is likely to constitute a threat to the health or safety of patients<sup>16</sup>, the Commissioner may disclose the information to any persons<sup>17</sup> to whom he thinks it should be disclosed in the interests of the health and safety of patients<sup>18</sup>.

Neither the Commissioner nor his officers or advisers<sup>19</sup> may be called on to give evidence in any proceedings, other than proceedings mentioned above, of matters coming to his or their knowledge in the course of an investigation<sup>20</sup>.

The Commissioner may disclose to the Information Commissioner any information obtained by, or furnished to, him under or for the purposes of the Health Service Commissioners Act 1993 if the information appears to him to relate to<sup>21</sup>: (a) a matter in respect of which the Information Commissioner could exercise any power conferred by certain statutory provisions<sup>22</sup>; (b) the commission of certain offences<sup>23</sup>.

1 As to the Health Service Commissioner for England see PARA 641.

2 As to the meaning of 'officer' see PARA 642 note 2.

3 Information obtained from the Information Commissioner by virtue of the Freedom of Information Act 2000 s 76 (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 615) must be treated for these purposes as obtained for the purposes of an investigation and, in relation to such information, the reference in head (1) in the text to the investigation has effect as a reference to any investigation: Health Service Commissioners Act 1993 s 15(4) (added by the Freedom of Information Act 2000 s 76(2), Sch 7 para 5). As to investigations see PARA 647. As to the Information Commissioner see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 518.

4 Health Service Commissioners Act 1993 s 15(1) (s 15(1), (1)(b) amended by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 47(1), (2)).

5 Health Service Commissioners Act 1993 s 15(1)(a). See also note 3. As to reports see PARA 650.



6 As to the Parliamentary Commissioner for Administration see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq.

7 'Local Commissioner' means a Local Commissioner under the Local Government Act 1974 Pt 3 (ss 23-34) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 839); Health Service Commissioners Act 1993 s 19 (definition added by SI 2007/1889).

8 Health Service Commissioners Act 1993 s 15(1)(aa) (added by SI 2007/1889; and amended by the Local Government and Public Involvement in Health Act 2007 s 182, Sch 12 Pt 2 para 15(1), (2)).

9 See generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 478 et seq.

10 Ie by virtue of the Health Service Commissioners Act 1993.

11 Health Service Commissioners Act 1993 s 15(1)(b)(i) (as amended: see note 4).

12 Health Service Commissioners Act 1993 s 15(1)(b)(ii). As to the offence of perjury see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 712.

13 Health Service Commissioners Act 1993 s 15(1)(c).

14 Ie under the Health Service Commissioners Act 1993 s 13: see PARA 649.

15 Health Service Commissioners Act 1993 s 15(1)(d).

16 See the Health Service Commissioners Act 1993 s 15(1)(e) (amended by the Health Act 1999 s 43(1), (2)). As to the meaning of 'patient' see PARA 645 note 29.

17 As to the meaning of 'person' see PARA 17 note 2.

18 See the Health Service Commissioners Act 1993 s 15(1B) (s 15(1B), (1C) added by the Health Service Commissioners (Amendment) Act 1996 s 11(3); Health Service Commissioners Act 1993 s 15(1B) amended by the Health Act 1999 s 43(1), (4)(a)). If the Commissioner discloses such information he must, where he knows the identity of the person concerned, inform that person that he has disclosed the information and of the identity of any person to whom he has disclosed it, and inform the person from whom the information was obtained that he has disclosed it: see the Health Service Commissioners Act 1993 s 15(1C) (as so added; and amended by the Health Act 1999 s 43(1), (5)).

19 The reference to the Commissioner's 'advisers' is a reference to persons from whom the Commissioner obtains advice under the Health Service Commissioners Act 1993 Sch 1 para 13 (see PARA 642): s 15(3) (added by the Health Service Commissioners (Amendment) Act 1996 s 11(5)).

20 Health Service Commissioners Act 1993 s 15(2) (amended by the Health Service Commissioners (Amendment) Act 1996 s 11(4); the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 47(1), (3)).

21 See the Health Service Commissioners Act 1993 s 18A(1) (s 18A added by the Freedom of Information Act 2000 Sch 7, para 6; Health Service Commissioners Act 1993 s 18A(1) amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 51). Nothing in the Health Service Commissioners Act 1993 s 15 (see the text to notes 1-20) applies in relation to the disclosure of information in accordance with s 18A: s 18A(3) (as so added).

22 See the Health Service Commissioners Act 1993 s 18A(1)(a) (as added: see note 21). The statutory provisions are the Data Protection Act 1998 Pt V (ss 40-50) (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 559 et seq), the Freedom of Information Act 2000 s 48 (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 608), or Pt IV (ss 50-56) (see **CONFIDENCE AND DATA PROTECTION**): see the Health Service Commissioners Act 1993 s 18A(1)(a)(i)-(iii) (as so added).

23 See the Health Service Commissioners Act 1993 s 18A(1)(b) (as added: see note 21). The offences are those under any provision of the Data Protection Act 1998 (other than Sch 9 para 12) (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 503 et seq), or the Freedom of Information Act 2000 s 77 (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 587): see the Health Service Commissioners Act 1993 s 18A(1)(b)(i), (ii) (as so added).

## **UPDATE**

### **651 Confidentiality of information**

NOTE 5--See *R (on the application of Kay) v Health Service Comr* [2008] All ER (D) 154 (Jul).

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## **652. Information prejudicial to the safety of the state.**

A Minister of the Crown<sup>1</sup> may give notice in writing<sup>2</sup> to the Health Service Commissioner for England<sup>3</sup> with respect to any document or information<sup>4</sup> specified in the notice that in the minister's opinion the disclosure of the document or information would be prejudicial to the safety of the state or otherwise contrary to the public interest<sup>5</sup>. Where such a notice is given to the Commissioner, nothing in the Health Service Commissioners Act 1993 is to be construed as authorising or requiring him or any of his officers<sup>6</sup> to communicate to any person<sup>7</sup> or for any purpose any document or information specified in the notice<sup>8</sup>.

1 As to Ministers of the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 354 et seq.

2 As to the meaning of 'writing' see PARA 7 note 2.

3 As to the Health Service Commissioner for England see PARA 641.

4 References above to a 'document or information' include references to a class of document or a class of information: Health Service Commissioners Act 1993 s 16(3).

5 Health Service Commissioners Act 1993 s 16(1) (s 16(1), (2) amended by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 48).

6 As to the meaning of 'officer' see PARA 642 note 2.

7 As to the meaning of 'person' see PARA 17 note 2.

8 Health Service Commissioners Act 1993 s 16(2) (as amended: see note 5).

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### **653. Use of information by Commissioner in another capacity.**

Where the Health Service Commissioner for England<sup>1</sup> also holds the office of Parliamentary Commissioner for Administration<sup>2</sup> (an 'additional office')<sup>3</sup>, if a person<sup>4</sup> initiates a complaint to the Commissioner as the holder of the additional office<sup>5</sup>, and the complaint relates partly to a matter with respect to which that person has previously initiated, or subsequently initiates, a complaint to the Commissioner in his capacity as such<sup>6</sup>, information obtained by the Commissioner or his officers<sup>7</sup> in the course of or for the purposes of the investigation of that other complaint may be disclosed for the purposes of carrying out his functions<sup>8</sup> in relation to the complaint initiated to him as the holder of the additional office<sup>9</sup>.

1 As to the Health Service Commissioner for England see PARA 641.

2 As to the Parliamentary Commissioner for Administration see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq.

3 Health Service Commissioners Act 1993 s 17(1) (amended by the Public Services Ombudsman (Wales) Act 2005 s 39(1), Sch 6 paras 27, 49(1), (2), Sch 7).

4 As to the meaning of 'person' see PARA 17 note 2.

5 Health Service Commissioners Act 1993 s 17(2)(a).

6 Health Service Commissioners Act 1993 s 17(2)(b).

7 As to the meaning of 'officer' see PARA 642 note 2.

8 As to the meaning of 'functions' see PARA 642 note 7.

9 Health Service Commissioners Act 1993 s 17(2).

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#### **654. Consultation and collaboration during investigations.**

Where the Health Service Commissioner for England<sup>1</sup>, at any stage in the course of conducting an investigation<sup>2</sup>, forms the opinion that the complaint relates partly or wholly to a matter which could be the subject of an investigation by the Parliamentary Commissioner for Administration<sup>3</sup>, the Public Services Ombudsman for Wales<sup>4</sup>, a Local Commissioner<sup>5</sup>, or the Scottish Public Services Ombudsman<sup>6</sup>, he must consult about the complaint with the appropriate commissioner or ombudsman and, if he considers it necessary, he must inform the person<sup>7</sup> initiating the complaint of the steps necessary to initiate a complaint to that commissioner or ombudsman<sup>8</sup>. Where the Commissioner so consults with another commissioner or ombudsman, the consultations may extend to any matter relating to the complaint, including<sup>9</sup> the conduct of any investigation into the complaint<sup>10</sup>, and the form, content and publication of any report of the results of such an investigation<sup>11</sup>. The provisions as to the confidentiality of information<sup>12</sup> do not apply in relation to the disclosure of information in the course of such consultations<sup>13</sup>.

If at any stage in the course of conducting an investigation the Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of the Parliamentary Commissioner for Administration<sup>14</sup>, a Local Commissioner<sup>15</sup>, or both<sup>16</sup>, he may, after obtaining the consent of the person aggrieved<sup>17</sup> or any person acting<sup>18</sup> on his behalf<sup>19</sup>, conduct an investigation jointly with that commissioner or those commissioners<sup>20</sup>. If the Commissioner forms the opinion that matters which are the subject of an investigation by the Parliamentary Commissioner for Administration<sup>21</sup>, a Local Commissioner<sup>22</sup>, or both<sup>23</sup>, include a matter within his jurisdiction, he may conduct an investigation of that matter jointly with that commissioner or those commissioners<sup>24</sup>.

If the Commissioner conducts an investigation jointly with another person, the requirements relating to reports<sup>25</sup> may be satisfied by a report made jointly with that person<sup>26</sup>. Apart from identifying any body or provider investigated, a joint report prepared by the Commissioner and a Local Commissioner must not mention the name of any person<sup>27</sup>, or contain any particulars which, in the opinion of the Commissioner and the Local Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report<sup>28</sup>, unless, after taking into account the public interest as well as the interests of the complainant (if any) and of other persons, the Commissioner and the Local Commissioner consider it necessary to mention the name of that person or to include in the report any such particulars<sup>29</sup>.

1 As to the Health Service Commissioner for England see PARA 641.

2 As to investigations see PARA 647.

3 I.e. under the Parliamentary Commissioner Act 1967: Health Service Commissioners Act 1993 s 18(1)(b). As to the Parliamentary Commissioner for Administration see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 41 et seq.

4    Ie under the Public Services Ombudsman (Wales) Act 2005: Health Service Commissioners Act 1993 s 18(1) (ba) (added by the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 50(1), (2)(c)). As to the Public Services Ombudsman for Wales see PARA 655.

5    Ie under the Local Government Act 1974 Pt III (ss 23-34) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 839): Health Service Commissioners Act 1993 s 18(1)(c). As to the meaning of 'Local Commissioner' see PARA 651 note 7.

6    Ie under the Scottish Public Services Ombudsman Act 2002: Health Service Commissioners Act 1993 s 18(1)(d) (amended by SI 2004/1823).

7    As to the meaning of 'person' see PARA 17 note 2.

8    Health Service Commissioners Act 1993 s 18(1) (amended by the Government of Wales Act 1998 Sch 10 para 14(2); Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 paras 60, 64; SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 50(1), (2)(a)).

9    Health Service Commissioners Act 1993 s 18(2) (amended by the Government of Wales Act 1998 Sch 10 para 14(3); the Housing Act 2004 ss 265(1), 266, Sch 15 paras 37(1), (3), Sch 16; SI 2004/1823; the Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 27, 50(1), (3)(a)).

10   Health Service Commissioners Act 1993 s 18(2)(a).

11   Health Service Commissioners Act 1993 s 18(2)(b).

12   Ie the Health Service Commissioners Act 1993 s 15: see PARA 651.

13   See the Health Service Commissioners Act 1993 s 18(3) (amended by the Government of Wales Act 1998 Sch 10 para 14(4), Sch 18 Pt I).

14   Health Service Commissioners Act 1993 s 18ZA(1)(a) (s 18ZA added by SI 2007/1889).

15   Health Service Commissioners Act 1993 s 18ZA(1)(b) (as added: see note 14).

16   Health Service Commissioners Act 1993 s 18ZA(1)(c) (as added: see note 14).

17   As to the meaning of 'person aggrieved' see PARA 645 note 4.

18   Ie in accordance with the Health Service Commissioners Act 1993 s 9(3): see PARA 646.

19   See the Health Service Commissioners Act 1993 s 18ZA(2) (as added: see note 14).

- 20 Health Service Commissioners Act 1993 s 18ZA(1) (as added: see note 14).
  
- 21 Health Service Commissioners Act 1993 s 18ZA(3)(a) (as added: see note 14).
  
- 22 Health Service Commissioners Act 1993 s 18ZA(3)(b) (as added: see note 14).
  
- 23 Health Service Commissioners Act 1993 s 18ZA(3)(c) (as added: see note 14).
  
- 24 Health Service Commissioners Act 1993 s 18ZA(3) (as added (see note 14); and amended by the Local Government and Public Involvement in Health Act 2007 s 182, Sch 12 Pt 2 para 15(1), (3)(a)).
  
- 25 Ie the requirements of the Health Service Commissioners Act 1993 s 14: see PARA 650.
  
- 26 See the Health Service Commissioners Act 1993 s 18ZA(4) (as added (see note 14); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 Pt 2 para 15(1), (3)(b), Sch 18 Pt 14).
  
- 27 Health Service Commissioners Act 1993 s 18ZA(5)(a) (as added: see note 14).
  
- 28 Health Service Commissioners Act 1993 s 18ZA(5)(b) (as added: see note 14).
  
- 29 Health Service Commissioners Act 1993 s 18ZA(5) (as added (see note 14); and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 Pt 2 para 15(1), (3)(c)). Nothing in the Health Service Commissioners Act 1993 s 18ZA(5) prevents a report mentioning the name of, or containing particulars likely to identify, the Mayor of London or any member of the London Assembly: s 18ZA(6) (as so added). As to the Mayor of London and the London Assembly see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 81, 82.

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## **(viii) The Public Services Ombudsman for Wales**

### **655. Health service complaints.**

The Public Services Ombudsman for Wales<sup>1</sup> has powers to investigate complaints made or referred to him concerning alleged maladministration or failures in service provision by health service bodies in Wales<sup>2</sup>. The bodies concerned are the board of community health councils in Wales<sup>3</sup>, a local health board, an NHS trust managing a hospital or other establishment or facility in Wales, a special health authority not discharging functions only or mainly in England<sup>4</sup>, the Wales Centre for Health<sup>5</sup>, a community health council, an independent provider in Wales<sup>6</sup>, a family health service provider in Wales, and a person with functions<sup>7</sup> relating to the handling and consideration of health care complaints<sup>8</sup>. The Ombudsman may issue guidance about good administrative practice, and if he does so bodies must have regard to the guidance in discharging their functions<sup>9</sup>.

1 As to the Public Services Ombudsman for Wales see **ADMINISTRATIVE LAW**. As to the meaning of 'Wales' see PARA 6 note 2.

2 See the Public Services Ombudsman (Wales) Act 2005 ss 2, 7; and **ADMINISTRATIVE LAW**.

3 As to the National Health Service and health service bodies in Wales see PARAS 74, 75.

4 As to the meaning of 'England' see PARA 6 note 2.

5 As to the Wales Centre for Health see PARA 595.

6 'Independent provider in Wales' means a person who, at the time of action which is the subject of a complaint provided services of any kind in Wales under arrangements with a Welsh health service body or a family health service provider in Wales, and was not a Welsh health service body or a family health service provider in Wales: Public Services Ombudsman (Wales) Act 2005 s 41(1). For the purposes of this definition, arrangements with the Welsh Ministers are arrangements with a Welsh health service body only to the extent that they are made in the discharge of a function of the Welsh Ministers relating to the national health service: s 41(2) (amended by the Government of Wales Act 2006 s 160(1), Sch 10 paras 67, 82(1), (3)). 'Welsh health service body' means the Welsh Ministers, a local health board, an NHS trust managing a hospital or other establishment or facility in Wales, a special health authority not discharging functions only or mainly in England: Public Services Ombudsman (Wales) Act 2005 s 41(1) (definition amended by the Government of Wales Act 2006 Sch 10 paras 67, 82(1), (2)(d)). 'Family health service provider in Wales' means: (1) a person who, at the time of action which is the subject of a complaint, provided services under a contract entered into by that person with a local health board under the National Health Service (Wales) Act 2006 s 42 (see PARA 242) or s 57 (see PARA 278); (2) a person who, at that time, had undertaken to provide in Wales general ophthalmic services or pharmaceutical services under that Act; (3) an individual who, at that time, provided in Wales primary medical services or primary dental services in accordance with arrangements made under s 50 (see PARA 267) or s 64 (see PARA 288) (except as an employee of, or otherwise on behalf of, a Welsh health service body or an independent provider in Wales): Public Services Ombudsman (Wales) Act 2005 s 41(1) (definition amended by



the National Health Service (Consequential Provisions) Act 2006 s 2, Sch 1 paras 279, 280(a); SI 2006/363). As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

7    Ie functions conferred by regulations made under the Health and Social Care (Community Health and Standards) Act 2003 s 113(2): see PARA 596.

8    See the Public Services Ombudsman (Wales) Act 2005 Sch 3 (amended by SI 2006/363).

9    See the Public Services Ombudsman (Wales) Act 2005 s 31; and **ADMINISTRATIVE LAW**.

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## **(11) LIABILITY AND REDRESS SCHEMES**

### **(i) Schemes for Meeting Losses and Liabilities of Health Service Bodies**

#### **A. IN GENERAL**

##### **656. Power to establish schemes.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> made with the consent of the Treasury<sup>3</sup> establish a scheme whereby any of the following bodies may make provision to meet: (1) expenses arising from any loss of or damage to their property<sup>4</sup>; and (2) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions<sup>5</sup> of the bodies concerned<sup>6</sup>. The bodies are strategic health authorities<sup>7</sup>, primary care trusts<sup>8</sup>, NHS trusts<sup>9</sup>, special health authorities<sup>10</sup>, NHS foundation trusts<sup>11</sup>, the Commission for Healthcare Audit and Inspection<sup>12</sup>, and the Health Protection Agency<sup>13</sup>; but a scheme may limit the class or description of bodies which are eligible to participate in it<sup>14</sup>.

A scheme may, in particular: (a) provide for the scheme to be administered by the Secretary of State or by a strategic health authority, primary care trust, NHS trust, special health authority or NHS foundation trust specified in the scheme<sup>15</sup>; (b) require any body which participates in the scheme to make payments in accordance with the scheme<sup>16</sup>; and (c) provide for the making of payments for the purposes of the scheme by the Secretary of State<sup>17</sup>. If the Secretary of State so directs<sup>18</sup>, a body which is eligible to participate in a scheme must do so<sup>19</sup>; but the Secretary of State may not make such a direction in relation to an NHS foundation trust<sup>20</sup>. Where a scheme provides for the scheme to be administered by the Secretary of State, a strategic health authority, primary care trust, NHS trust, special health authority or NHS foundation trust must carry out such functions in connection with the administration of the scheme by the Secretary of State as he may direct<sup>21</sup>. A person<sup>22</sup> or body administering a scheme does not require permission under any provision of the Financial Services and Markets Act 2000<sup>23</sup> as respects activities carried out under the scheme<sup>24</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the making of regulations see PARA 9.

3 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 National Health Service Act 2006 s 71(1)(a). As to the meaning of 'property' see PARA 4 note 9. As to the equivalent provision to the National Health Service Act 2006 s 71 in relation to Wales see the National Health Service (Wales) Act 2006 s 30. As to the meaning of 'Wales' see PARA 6 note 2.

5 As to the meaning of 'functions' see PARA 6 note 3.

6 National Health Service Act 2006 s 71(1)(b). The following regulations have been made: the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251 (see PARA 657 et seq); the National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686 (see PARA 668 et seq); the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873 (see PARA 675 et seq); the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874 (see PARA 686 et seq); all of which regulations have effect under the National Health Service Act 2006 s 71 by virtue of the National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(1), (2).

7 National Health Service Act 2006 s 71(2)(a). As to strategic health authorities see PARA 94 et seq.

8 National Health Service Act 2006 s 71(2)(b). As to primary care trusts see PARA 111.

9 National Health Service Act 2006 s 71(2)(c). As to NHS trusts see PARA 155.

10 National Health Service Act 2006 s 71(2)(d). As to the special health authorities see PARA 136.

11 National Health Service Act 2006 s 71(2)(e). As to NHS foundation trusts see PARA 174.

12 National Health Service Act 2006 s 71(2)(f). As to the Commission for Healthcare Audit and Inspection see PARA 552.

13 National Health Service Act 2006 s 71(2)(g). As to the Health Protection Agency see PARA 213.

14 National Health Service Act 2006 s 71(2).

15 National Health Service Act 2006 s 71(3)(a).

16 National Health Service Act 2006 s 71(3)(b).

17 National Health Service Act 2006 s 71(3)(c).

18 Directions under the National Health Service Act 2006 s 71(4), (6) (see the text to note 21) must be given by an instrument in writing: see s 273(4); and PARA 9. The provisions of s 71(4) and (6) do not affect any other power of direction of the Secretary of State: s 71(7). As to the meaning of 'writing' see PARA 7 note 2.

19 National Health Service Act 2006 s 71(4).

20 See the National Health Service Act 2006 s 71(5).

21 National Health Service Act 2006 s 71(6). See also note 18.

22 As to the meaning of 'person' see PARA 17 note 2.

23 See generally **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 5 et seq.

24 National Health Service Act 2006 s 71(8).

## **UPDATE**

### **656 Power to establish schemes**

TEXT AND NOTES--National Health Service Act 2006 s 71(1), (2), (3) amended, s 71(5) substituted, s 71(2A), (9), (10) added: Health and Social Care Act 2008 s 142.

NOTE 4--National Health Service (Wales) Act 2006 s 30 amended: Health and Social Care Act 2008 Sch 5 para 88, Sch 15 Pt 1.

NOTE 5--See National Health Service Act 2006 s 71(2A) added: Health and Social Care Act 2008 s 142(4).

TEXT AND NOTE 12--For 'the Commission for Healthcare Audit and Inspection' substitute 'the Care Quality Commission': National Health Service Act 2006 s 71(2)(f) (amended by the Health and Social Care Act 2008 Sch 5 para 85).

TEXT AND NOTE 13--Add to the list of bodies, the Secretary of State, and a body or other person (other than a body or other person within the list) providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within the list: National Health Service Act 2006 s 71(2)(h), (i) (added by the Health and Social Care Act 2008 s 142(3)(b)). See also National Health Service Act 2006 s 71(9), (10) (added by the Health and Social Care Act 2008 s 142(7)).

TEXT AND NOTE 20--See National Health Service Act 2006 s 71(5) (substituted by the Health and Social Care Act 2008 s 142(6)).

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## ***B. CLINICAL NEGLIGENCE SCHEME***

### **657. The Clinical Negligence Scheme for Trusts.**

A scheme<sup>1</sup>, known as the Clinical Negligence Scheme for Trusts, is established whereby an eligible body<sup>2</sup> may make provision<sup>3</sup> to meet qualifying liabilities<sup>4</sup>. The scheme is administered by the Secretary of State<sup>5</sup>.

1 As to the power of the Secretary of State to establish such schemes see PARA 656.

2 As to the meaning of 'eligible body' see PARA 658 note 1.

3 In accordance with the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, regs 3-11: see PARAS 658-667.

4 See the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 2. As to the meaning of 'qualifying liability' see PARA 659 note 2.

5 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 5. The Secretary of State's functions in relation to the scheme are delegated to the National Health Service Litigation Authority: see PARA 148.

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### **658. Eligible bodies.**

A body is eligible<sup>1</sup> to participate in the Clinical Negligence Scheme for Trusts<sup>2</sup> if it is an NHS trust<sup>3</sup>, an NHS foundation trust<sup>4</sup>, a strategic health authority<sup>5</sup>, a special health authority<sup>6</sup>, a primary care trust<sup>7</sup>, or the Health Protection Agency<sup>8</sup>.

1 'Eligible body' means a body of a kind described in the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 3 or a body which before 1 October 2002 was a health authority whose area was situated in England: reg 1(2) (definition amended by SI 2002/2469). As to the meaning of 'England' see PARA 6 note 2.

2 As to the Clinical Negligence Scheme for Trusts see PARA 657.

3 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 3(1)(a). As to NHS trusts see PARA 155.

4 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 3(1)(aa) (added by SI 2004/696). As to NHS foundation trusts see PARA 174.

5 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 3(1)(b) (substituted by SI 2002/2469). As to strategic health authorities see PARA 94 et seq.

6 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 3(1)(c). As to the special health authorities see PARA 136.

7 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 3(1)(d) (added by SI 2000/2341). As to primary care trusts see PARA 111.

8 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 3(1)(e) (added by SI 2002/1073; and amended by SI 2005/604). As to the Health Protection Agency see PARA 213.

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### **659. Liabilities to which the scheme applies.**

The Clinical Negligence Scheme for Trusts<sup>1</sup> applies to any liability<sup>2</sup> in tort owed by a member<sup>3</sup> to a third party in respect of or consequent upon personal injury or loss arising out of or in connection with any breach of a duty of care owed by that body to any person<sup>4</sup> in connection with the diagnosis of any illness<sup>5</sup>, or the care or treatment of any patient<sup>6</sup>, in consequence of any act or omission to act on the part of a person employed or engaged by a member<sup>7</sup> in connection with any relevant function<sup>8</sup> of that member<sup>9</sup>. The scheme also applies to any liability in tort under the law of England and Wales owed to a third party by a specified person<sup>10</sup> in respect of, or consequent upon, personal injury or loss<sup>11</sup> arising out of, or in connection with, any breach of a duty of care owed by the specified person to any person<sup>12</sup> in connection with the diagnosis of any illness<sup>13</sup>, or the care or treatment of any patient<sup>14</sup>.

1 As to the Clinical Negligence Scheme for Trusts see PARA 657.

2 A liability of a kind described in the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 4 is known as a 'qualifying liability': see reg 1(2).

3 'Member' means an eligible body which is a member of the scheme: National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 1(2). As to the meaning of 'eligible body' see PARA 658 note 1.

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the meaning of 'illness' see PARA 10 note 5.

6 As to the meaning of 'patient' see PARA 15 note 6.

7 The reference to 'any act or omission to act on the part of a person engaged by a member' includes any act or omission to act on the part of an employee or agent of the person so engaged: National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 4(2) (added by SI 2002/1073).

8 'Relevant function' means the function of providing services in England or securing the provision of services for the purposes of the National Health Service Act 2006 or by virtue of the Health and Medicines Act 1988 s 7 (see PARA 503); see the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 1(2) (definition substituted by SI 1997/527; and amended by SI 2002/1073, SI 2005/604); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to the meaning of 'England' see PARA 6 note 2.

9 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 4(1) (numbered as such by SI 2002/1073). As to the liability in tort of medical practitioners and health service bodies see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 196-205.

10 A specified person is a person engaged by a primary care trust to provide services under the National Health Service Act 2006 which, immediately before that engagement, the primary care trust was providing itself, and which has satisfied the Secretary of State that, were it a body falling within the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 3 (see PARA 658), it would meet the requirements to be admitted as a member of the Scheme: reg 4(6), (9) (reg 4(3)-(9) added by SI 2006/2390; and substituted by SI 2006/3087); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). However, this does not apply in the case of primary medical or dental services which, immediately before the engagement referred to, the primary care trust was providing under the National Health Service Act 2006 s 83(2)(a) (see PARA 241), s 92 (see PARA 267), s 99(2) (see PARA 277) or s 107 (see PARA 288): National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 4(7), (9) (as so added and substituted); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to primary care trusts see PARA 111. As to the Secretary of State see PARA 6 note 8.

11 See the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 4(3) (as added and substituted: see note 10). For the purposes of the scheme and the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, the liabilities of a primary care trust must be taken to include the liabilities referred to in reg 4(3) of a specified person (as referred to in reg 4(6): see note 10) whom that primary care trust has engaged to provide services, and references in the regulations to the liabilities of a member or eligible body must be construed accordingly: see reg 4(8) (as so added and substituted).

12 In consequence of any act or omission to act in connection with the provision of services under the National Health Service Act 2006 on the part of the specified person or a person employed or engaged by him: see the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 4(4), (5), (9) (all as added and substituted: see note 10).

13 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 4(4)(a) (as added and substituted: see note 10).

14 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 4(4)(b) (as added and substituted: see note 10).



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## **660. Membership of the scheme.**

An eligible body<sup>1</sup> which wishes to participate in the Clinical Negligence Scheme for Trusts<sup>2</sup> during any period beginning after 31 March 1997<sup>3</sup> must apply to the Secretary of State to be admitted as a member<sup>4</sup>. An application must be made in writing in such form as the Secretary of State may require<sup>5</sup>, and specify the date that the eligible body wishes its membership to begin<sup>6</sup>. An applicant<sup>7</sup> must provide such information as the Secretary of State may in writing request it to provide, as respects: (1) the nature of its relevant functions<sup>8</sup>; (2) the number of employees of the applicant who are engaged in its performance of any relevant function, or such part of any relevant function as the Secretary of State may specify, and the qualifications and experience of those employees<sup>9</sup>; (3) the nature and extent of any claims made against the applicant in respect of personal injuries sustained by third parties as a result of the carrying out by the applicant of any relevant function<sup>10</sup>; and (4) such other information as he may request in connection with the application<sup>11</sup>.

The Secretary of State must, having regard to the information provided by the applicant, and to such other factors as he considers to be material to the application, determine whether or not the applicant should be admitted as a member, and must notify the applicant of his decision in writing<sup>12</sup>. Where the application of an eligible body has been successful, that body must be admitted as a member with effect from such date as may be determined by the Secretary of State<sup>13</sup>.

1 As to the meaning of 'eligible body' see PARA 658 note 1.

2 As to the Clinical Negligence Scheme for Trusts see PARA 657.

3 An eligible body which, before 1 December 1995, gave notice in writing to the Secretary of State of its wish to participate in the scheme during any period beginning before 1 April 1996 became a member of the scheme with effect from 1 March 1996: see the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(1). An eligible body which, before 1 February 1996, gave notice in writing of its wish to participate in the scheme with effect from 1 April 1996 became a member of the scheme with effect from that date: see reg 6(2). As to the meaning of 'writing' see PARA 7 note 2. As to the Secretary of State see PARA 6 note 8. As to the meaning of 'member' see PARA 659 note 3.

4 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(3).

5 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(4)(a).

6 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(4)(b) (substituted by SI 2000/2341).

7 'Applicant' means an eligible body which has applied under the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(3) (see the text to notes 1-4) to be admitted as a member, and 'application' must be construed accordingly: reg 6(8).

8 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(5)(a). As to the meaning of 'relevant function' see PARA 659 note 8.

9 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(5)(b).

10 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(5)(c).

11 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(5)(d).

12 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(6).

13 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(7) (amended by SI 2000/2341). As to termination of membership see PARA 661.

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### **661. Termination of membership.**

A member<sup>1</sup> may terminate its participation in the Clinical Negligence Scheme for Trusts<sup>2</sup> on 31 March in any year by giving not less than 12 months<sup>3</sup> notice in writing<sup>4</sup> to that effect to the Secretary of State<sup>5</sup>. However, a member's participation in the scheme may not be so terminated before the expiry of three consecutive membership years<sup>6</sup> beginning on the date on which<sup>7</sup> its membership takes effect<sup>8</sup>.

Where:

- 419 (1) any payment which a member is<sup>9</sup> liable to make to the Secretary of State has remained unpaid for a period of not less than 28 days beginning on the date on which the payment should have been made<sup>10</sup>;
- 420 (2) a member has failed to provide, within 28 days, or such further period as the Secretary of State may in writing allow, of being requested to do so, any information which it is required<sup>11</sup> to provide<sup>12</sup>; or
- 421 (3) the continued membership of any member would, in the opinion of the Secretary of State, be detrimental to the efficient administration of the scheme or to the interests of other members<sup>13</sup>,

the Secretary of State may give notice in writing to that member that its participation in the scheme is to cease on a date falling not less than 28 days after that on which the notice is given, and that member's participation in the scheme is, unless the Secretary of State in writing withdraws the notice before that date, terminated on that date<sup>14</sup>.

1 As to the meaning of 'member' see PARA 659 note 3.

2 As to the Clinical Negligence Scheme for Trusts see PARA 657. As to membership of the scheme see PARA 660.

3 As to the meaning of 'month' see PARA 28 note 16.

4 As to the meaning of 'writing' see PARA 7 note 2.

5 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 7(1). As to the Secretary of State see PARA 6 note 8.

6 'Membership year' means, in relation to an eligible body, any period of 12 months beginning on 1 April during any part of which that body is a member of the scheme: National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 1(2). As to the meaning of 'eligible body' see PARA 658 note 1.

7     le by virtue of the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(7): see PARA 660.

8     National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 7(2)(c).

9     le by virtue of the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8: see PARA 662.

10    National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 7(3)(a).

11    le by virtue of the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 10: see PARA 666.

12    National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 7(3)(b).

13    National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 7(3)(c).

14    National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 7(3).

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## **662. Contributions to scheme.**

A member<sup>1</sup> of the Clinical Negligence Scheme for Trusts<sup>2</sup> must pay to the Secretary of State<sup>3</sup> in respect of each membership year<sup>4</sup> such amount as is determined in relation to that member, and notified to it<sup>5</sup>. When determining in relation to any member the amount of the payment to be made, the Secretary of State must have regard to: (1) his estimate of the total amount which will<sup>6</sup> fall to be paid during that membership year in respect of all qualifying liabilities<sup>7</sup> under the scheme<sup>8</sup>; (2) the nature of the member's relevant functions<sup>9</sup>; (3) the number of employees of the member who are engaged in its performance of a relevant function, or any part of such a function, and the qualifications and experience of those employees<sup>10</sup>; (4) any agreement between the Secretary of State and the member that the provisions relating to liabilities incurred before membership<sup>11</sup> or falling to be met after termination of membership<sup>12</sup> are not to apply in relation to certain liabilities incurred by the member<sup>13</sup>; and (5) his assessment of (a) the likely effectiveness of any steps being taken, or to be taken, by the member, as respects the manner in which it exercises any relevant function, with a view to reducing the incidence of qualifying liabilities in connection with that function<sup>14</sup>; and (b) the effectiveness of any such steps which may previously have been taken<sup>15</sup>. He may also have regard to any other factor concerning that or any other member of the scheme which he considers to be material to his determination<sup>16</sup>.

Where, after notice has been given to a member in relation to any membership year, it appears to the Secretary of State that: (i) the amount specified in the notice was incorrectly calculated<sup>17</sup> or determined by reference to information which was incorrect<sup>18</sup>; or (ii) in the light of further information which has become available to him, the determination of that amount ought to be reconsidered<sup>19</sup>, he must reconsider the determination and may, at any time before the end of the membership year to which it relates, revise the amount of the payment to be made<sup>20</sup>.

Any amount which falls to be paid by a member<sup>21</sup> must be paid by the member to the Secretary of State: (A) in relation to its first membership year, by no later than eight months from the date of receipt by the Secretary of State<sup>22</sup> of its application<sup>23</sup>; (B) in relation to its second membership year, by not later than 1 August in that year<sup>24</sup>; and (C) in relation to any subsequent membership year, by no later than 30 November in the preceding year<sup>25</sup>.

1 As to the meaning of 'member' see PARA 659 note 3.

2 As to the Clinical Negligence Scheme for Trusts see PARA 657.

3 As to the Secretary of State see PARA 6 note 8.

4 As to the meaning of 'membership year' see PARA 661 note 6.

5 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(1). The Secretary of State must give notice in writing to each member of the amount of the payment which it is to

make: (1) as respects its first membership year, by no later than six months from the date of receipt by the Secretary of State of its application in accordance with reg 6(3) (see PARA 660) (reg 8(3)(c)(i) (reg 8(3)(c) substituted, (d) added, by SI 2000/2341)); (2) as respects its second membership year, by no later than 1 July in that year (National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(3)(c)(ii) (as so substituted)); and (3) as respects any subsequent membership year, by no later than 31 October in the preceding year (reg 8(3)(d) (as so added)). As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'month' see PARA 28 note 16. 'Preceding year' means, in relation to a membership year, the period of 12 months immediately preceding that membership year: reg 1(2).

6   Ie by virtue of the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9: see PARA 663.

7   As to the meaning of 'qualifying liability' see PARA 659 note 2.

8   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(2)(a).

9   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(2)(b). As to the meaning of 'relevant function' see PARA 659 note 8.

10   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(2)(c).

11   Ie the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(b): see PARA 663.

12   Ie the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(c): see PARA 663.

13   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(2)(d).

14   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(2)(e)(i).

15   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(2)(e)(ii).

16   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(2).

17   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(4)(a)(i).

18   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(4)(a)(ii).

19   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(4)(b).

20   National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(4). Where an amount is so revised, the Secretary of State must give to the member notice in writing of the revised amount,

and reg 8(4) has effect in relation to that amount as if the notice had been given under reg 8(3) (see note 5): reg 8(5).

21    Ie under the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(1): see the text to notes 1-5.

22    Ie in accordance with the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 6(3): see PARA 660.

23    National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(6)(c)(i) (reg 8(6)(c) substituted, (d) added, by SI 2000/2341).

24    National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(6)(c)(ii) (as substituted: see note 23).

25    National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 8(6)(d) (as added: see note 23).

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### **663. Payments under the scheme.**

Where, in any membership year<sup>1</sup>, a payment falls to be made by any member<sup>2</sup> of the Clinical Negligence Scheme for Trusts in connection with a claim in respect of a qualifying liability<sup>3</sup>, the Secretary of State<sup>4</sup> may pay to or on behalf of that member an amount to be determined<sup>5</sup> by him<sup>6</sup>.

No such payment may be made in respect of any liability which falls to be met after a member has given notice<sup>7</sup> to terminate its participation in the scheme, unless the Secretary of State is satisfied that the liability would have fallen to be met at that time irrespective of the member's decision to give such notice<sup>8</sup>.

No such payment may be made in respect of any liability incurred by an eligible body before it became a member, unless<sup>9</sup>: (1) the claim by a third party against the member in respect of that liability was made after it became a member<sup>10</sup>; (2) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date<sup>11</sup>, that the claim had been made<sup>12</sup>; (3) the Secretary of State agreed, no later than the date on which the member became a member, that this provision does not apply so as to preclude a payment in respect of any claim in relation to which heads (1) and (2) above are satisfied<sup>13</sup>; and (4) that agreement remains in force at the date on which the claim falls to be met by the member<sup>14</sup>.

No such payment may be made in respect of any liability which falls to be met after the date of the termination of the member's participation in the scheme, unless: (a) the claim by a third party against the member in respect of that liability was made prior to that date<sup>15</sup>; (b) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date, that the claim had been made<sup>16</sup>; (c) prior to the date of termination of the member's participation in the scheme, the Secretary of State agreed that this provision does not apply so as to preclude a payment in respect of any claim in relation to which heads (a) and (b) above are satisfied<sup>17</sup>; and (d) that agreement remained in force at the date of termination<sup>18</sup>.

No such payment may be made except to such extent as the Secretary of State may determine, in respect of:

- 422 (i) any liability admitted by a member without the prior consent in writing<sup>19</sup> of the Secretary of State<sup>20</sup>;
- 423 (ii) any liability determined by a court in proceedings conducted by the member otherwise than in consultation with the Secretary of State<sup>21</sup>;
- 424 (iii) any payment which falls to be made by a member in consequence of that member having agreed, without the prior consent in writing of the Secretary of State, to be bound by the determination of any person<sup>22</sup> or body as to the making of a payment by that member in respect of a qualifying liability<sup>23</sup>;
- 425 (iv) any payment which falls to be made by a member where the member has not complied with any condition imposed by the Secretary of State relating to the claim<sup>24</sup>;
- 426 (v) any payment into court which the member has made without the prior consent in writing of the Secretary of State<sup>25</sup>;
- 427 (vi) any payment, other than one to which head (iii) above applies, which the member has agreed to make otherwise than in the course of legal proceedings, or



in consequence of its having compromised legal proceedings, without the prior consent in writing of the Secretary of State<sup>26</sup>; or  
 428 (vii) any liability of an amount which is less than that for the time being agreed between the Secretary of State and the member as the minimum amount of any liability in respect of which a payment is to be made under the scheme<sup>27</sup>.

1 As to the meaning of 'membership year' see PARA 661 note 6.

2 In the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9, 'member' includes an eligible body whose participation in the Clinical Negligence Scheme for Trusts has been terminated and in respect of whom the conditions specified in reg 9(2)(c)(iii) and (iv) (see the text to notes 17, 18) are satisfied: reg 9(4)(b). As to the meaning of 'member' generally see PARA 659 note 3. As to the meaning of 'eligible body' see PARA 658 note 1. As to the Clinical Negligence Scheme for Trusts see PARA 657.

3 As to the meaning of 'qualifying liability' see PARA 659 note 2.

4 As to the Secretary of State see PARA 6 note 8.

5 In accordance with the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3): see PARA 664.

6 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(1) (amended by SI 1997/527; SI 1999/1274). In the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9, any references to: (1) payments made or falling to be made or sums payable by, to or on behalf of a member; (2) claims made against or falling to be met by a member; (3) proceedings conducted by a member; (4) admissions, agreements or compromises made by a member; (5) compliance by a member with conditions imposed by the Secretary of State; (6) the award of damages against a member; (7) legal and associated costs incurred by or on behalf of a member; (8) the contribution of a member towards legal costs; or (9) a decision by a member to make a payment into court, must, in appropriate cases, be construed as including a reference to all such matters in respect of a person referred to in reg 4(6) (see PARA 659): reg 9(5) (added by SI 2006/2390; and substituted by SI 2006/3087). As to payments on account see PARA 665.

7 In under the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 7(1): see PARA 661.

8 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(a).

9 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(b) (amended by SI 2000/2341).

10 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(b)(i) (amended by SI 2000/2341).

11 'Qualifying date' means the date falling 14 days after that on which the member became aware that a claim had been made, or after that on which, in the opinion of the Secretary of State, the member ought to have become aware of that fact, whichever is the later: National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(4)(c).

- 12 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(b)(ii).
- 13 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(b)(iii) (amended by SI 2000/2341).
- 14 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(b)(iv).
- 15 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(c)(i).
- 16 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(c)(ii).
- 17 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(c)(iii).
- 18 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(c)(iv).
- 19 As to the meaning of 'writing' see PARA 7 note 2.
- 20 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(d)(i).
- 21 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(d)(ii).
- 22 As to the meaning of 'person' see PARA 17 note 2.
- 23 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(d)(ia) (added by SI 1997/527).
- 24 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(d)(iib) (reg 9(2)(d)(iib), (iic) added by SI 1999/1274).
- 25 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(d)(iic) (as added: see note 24). As to payments into court see **CIVIL PROCEDURE** vol 11 (2009) PARA 729 et seq.
- 26 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(d)(iii) (added by SI 1997/527).
- 27 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(2)(d)(iv).

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#### **664. Determination of amounts to be paid.**

The amount of any payment to be paid by the Secretary of State<sup>1</sup> to or on behalf of any member<sup>2</sup> must be determined by reference to<sup>3</sup>:

- 429 (1) where an award of damages has been made against the member by a court, the amount of that award, together with the amounts of the legal and associated costs awarded to the claimant and of any such costs incurred by or on behalf of the member<sup>4</sup>;
- 430 (2) where legal proceedings have been compromised by the member, the amount of any sum paid or payable by the member in relation to the claimant's claim for damages<sup>5</sup>, the member's contribution towards any legal and associated costs incurred by the claimant<sup>6</sup>, and any such costs incurred by or on behalf of the member<sup>7</sup>;
- 431 (3) where, in any legal proceedings, a court has declined to award damages against the member, the amount of any legal and associated costs incurred by or on behalf of the member, to the extent that such costs are not recoverable from the claimant<sup>8</sup>;
- 432 (4) where, otherwise than in the course of legal proceedings: (a) a member has agreed to make a payment in settlement of a claim, the amount of that payment<sup>9</sup>; (b) a member has agreed to make any contribution towards legal or associated costs incurred by a person<sup>10</sup> in connection with that person's claim against the member in respect of a qualifying liability<sup>11</sup>, the amount of that contribution<sup>12</sup>; and the amount of any legal or associated costs incurred by or on behalf of the member in connection with the claim<sup>13</sup>;
- 433 (5) where a member has agreed to be bound by the determination of any person or body as to the making of a payment by that member in respect of a qualifying liability, the amount of the payment and the amount of any legal or associated costs incurred by the person making the claim and any such costs incurred by or on behalf of the member in connection with the claim<sup>14</sup>;
- 434 (6) where the member has decided to make a payment into court, the amount of that payment<sup>15</sup>.

<sup>1</sup> As to the Secretary of State see PARA 6 note 8.

<sup>2</sup> I.e. any payment under the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(1): see PARA 663. As to the meaning of 'member' see PARA 663 note 2.

<sup>3</sup> National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3) (amended by SI 1999/1274). In the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9, any references to: (1) payments made or falling to be made or sums payable by, to or on behalf of a member; (2) claims made against or falling to be met by a member; (3) proceedings conducted by a member; (4) admissions, agreements or compromises made by a member; (5) compliance by a member with conditions imposed by the Secretary of State; (6) the award of damages against a member; (7) legal and associated costs incurred by or on behalf of a member; (8) the contribution of a member towards legal costs; or (9) a decision by

a member to make a payment into court, must, in appropriate cases, be construed as including a reference to all such matters in respect of a person referred to in reg 4(6) (see PARA 659): reg 9(5) (added by SI 2006/2390; and substituted by SI 2006/3087).

4 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(a) (amended by SI 1999/1274).

5 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(b)(i) (amended by SI 1999/1274).

6 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(b)(ii).

7 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(b)(iii) (amended by SI 1999/1274).

8 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(c) (amended by SI 1999/1274). This provision also refers to such costs as are not recoverable from the Legal Aid Board under the Legal Aid Act 1988 s 18 (repealed). The Legal Aid Board has been replaced by the Legal Services Commission: see further **LEGAL AID** vol 65 (2008) PARAS 2-3.

9 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(d)(i) (reg 9(3)(d) substituted, (3)(e) added, by SI 1997/527).

10 As to the meaning of 'person' see PARA 17 note 2.

11 As to the meaning of 'qualifying liability' see PARA 659 note 2.

12 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(d)(ii) (as substituted: see note 9).

13 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(d) (as substituted (see note 9); and amended by SI 1999/1274).

14 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(e) (as added (see note 9); and amended by SI 1999/1274).

15 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9(3)(f) (added by SI 1999/1274). As to payments into court see **CIVIL PROCEDURE** vol 11 (2009) PARA 729 et seq.

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### **665. Payments on account.**

Where, in any membership year<sup>1</sup>, a payment (including a payment into court) falls to be made by a member<sup>2</sup> of the Clinical Negligence Scheme for Trusts<sup>3</sup> in connection with a claim in respect of which a payment may become payable by the Secretary of State<sup>4</sup>, the Secretary of State may make a payment on account of any amount which may become so payable by him<sup>5</sup>. Such payment on account may be made to or on behalf of the member<sup>6</sup>. Where the amount of any such payment on account exceeds the amount of any payment the Secretary of State subsequently determines to make<sup>7</sup> the excess is recoverable from the member<sup>8</sup>.

1 As to the meaning of 'membership year' see PARA 661 note 6.

2 As to the meaning of 'member' see PARA 659 note 3.

3 As to the Clinical Negligence Scheme for Trusts see PARA 657.

4 Ie under the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9: see PARA 663. As to the Secretary of State see PARA 6 note 8.

5 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9A(1) (reg 9A added by SI 1999/1274).

6 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9A(2) (as added: see note 5).

7 Ie under reg 9: see PARA 663. As to determinations see PARA 664.

8 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 9A(3) (as added: see note 5).

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#### **666. Provision of information.**

A member<sup>1</sup> of the Clinical Negligence Scheme for Trusts<sup>2</sup> must, at such times and in such manner as the Secretary of State<sup>3</sup> may require, furnish to the Secretary of State such information as he may request, about: (1) the nature of any relevant function<sup>4</sup> being carried on, or to be carried on, by the member in any membership year<sup>5</sup> which the Secretary of State may specify<sup>6</sup>; (2) the number of employees of the member who are engaged in its performance of any relevant function, or such part of any relevant function as the Secretary of State may specify, and the qualifications and experience of those employees<sup>7</sup>; and (3) any event of which the member is aware which it considers might give rise to a qualifying liability<sup>8</sup>.

1 As to the meaning of 'member' see PARA 659 note 3.

2 As to the Clinical Negligence Scheme for Trusts see PARA 657.

3 As to the Secretary of State see PARA 6 note 8.

4 As to the meaning of 'relevant function' see PARA 659 note 8.

5 As to the meaning of 'membership year' see PARA 661 note 6.

6 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 10(a).

7 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 10(b).

8 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 10(c). As to the meaning of 'qualifying liability' see PARA 659 note 2.

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# **667. Publication of directions and guidance.**

The Secretary of State<sup>1</sup> must make available to eligible bodies<sup>2</sup>, in such form and at such times as he may consider appropriate: (1) any directions he may give, to any body directed<sup>3</sup> to carry out functions<sup>4</sup> in connection with the administration of the Clinical Negligence Scheme for Trusts<sup>5</sup>, with respect to the discharge by that body of those functions<sup>6</sup>; (2) any guidance he may give to that body as to the manner in which the scheme is to be administered<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'eligible body' see PARA 658 note 1.

3 Ie under the National Health Service Act 2006 s 71(6): see PARA 656.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 As to the Clinical Negligence Scheme for Trusts see PARA 657. As to the administration of the scheme see PARA 657 note 5.

6 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 11(a); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

7 National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251, reg 11(b).

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### ***C. EXISTING LIABILITIES SCHEME***

#### **668. The Existing Liabilities Scheme.**

A scheme<sup>1</sup>, known as the Existing Liabilities Scheme, is established whereby an eligible body<sup>2</sup> may<sup>3</sup> make provision to meet qualifying liabilities<sup>4</sup>. The scheme is administered by the Secretary of State<sup>5</sup>.

1 As to the power of the Secretary of State to establish such schemes see PARA 656.

2 As to the meaning of 'eligible body' see PARA 669 note 1.

3 In accordance with the National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, regs 3-8: see PARAS 669-674.

4 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 2. As to the meaning of 'qualifying liability' see PARA 670.

5 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 5. The Secretary of State's functions in relation to the scheme are delegated to the National Health Service Litigation Authority: see PARA 148.



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### **669. Eligible bodies.**

A body is eligible<sup>1</sup> to participate in the Existing Liabilities Scheme<sup>2</sup> if:

- 435 (1) the body is a strategic health authority<sup>3</sup>, a health authority<sup>4</sup>, a special health authority<sup>5</sup>, a primary care trust<sup>6</sup>, an NHS trust<sup>7</sup>, an NHS foundation trust<sup>8</sup>, or the Health Protection Agency<sup>9</sup>;
- 436 (2) the body has during any period falling before 1 April 1995 exercised any relevant function<sup>10</sup>, or had transferred to it the liabilities of any other body which exercised any relevant function during any period falling before that date<sup>11</sup>; and
- 437 (3) the body has applied to the Secretary of State<sup>12</sup>, in such manner as he may require, to participate in the scheme, and the Secretary of State has admitted the body to the scheme<sup>13</sup>.

1 'Eligible body' means a body of a kind described in the National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3: reg 1(2).

2 As to the Existing Liabilities Scheme see PARA 668.

3 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(a)(zi) (reg 3(a)(zi), (iia) added by SI 2002/2469). As to strategic health authorities see PARA 94 et seq.

4 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(a)(i).

5 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(a)(ii). As to the special health authorities see PARA 136.

6 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(a)(iia) (as added: see note 3). As to primary care trusts see PARA 111.

7 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(a)(iii) (amended by SI 2004/696). As to NHS trusts see PARA 155.

8 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(a)(iia) (added by SI 2004/696). As to NHS foundation trusts see PARA 174.

9 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(a)(iv) (substituted by SI 2005/604). As to the Health Protection Agency see PARA 213.

10 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(b)(i). 'Relevant function' means the function of providing services in England for the purposes of the National Health Service Act 1977 (repealed) or by virtue of the Health and Medicines Act 1988 s 7 (see PARA 503) or under the National Health Service and Community Care Act 1990 Sch 2 para 14 or 15 (Sch 2 repealed): National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 1(2) (definition substituted by SI 1997/526). As to the meaning of 'England' see PARA 6 note 2.

11 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(b)(ii).

12 As to the Secretary of State see PARA 6 note 8.

13 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(c).

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#### **670. Liabilities to which the scheme applies.**

The Existing Liabilities Scheme<sup>1</sup> applies to any liability in tort owed by an eligible body<sup>2</sup> to a third party in respect of or consequent upon personal injury or loss arising out of or in connection with any breach before 1 April 1995 of a duty of care owed by that body, or a body<sup>3</sup> the liabilities of which have been transferred to that body, to any person<sup>4</sup> in connection with the diagnosis of any illness<sup>5</sup>, or the care or treatment of any patient<sup>6</sup>, in consequence of any act or omission to act on the part of a person employed or engaged by such a body in connection with any relevant function<sup>7</sup> of that body<sup>8</sup>. Such a liability is known as a 'qualifying liability'<sup>9</sup>.

1 As to the Existing Liabilities Scheme see PARA 668.

2 As to the meaning of 'eligible body' see PARA 669 note 1.

3 Is a body referred to in the National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 3(b)(ii): see PARA 669.

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to the meaning of 'illness' see PARA 10 note 5.

6 As to the meaning of 'patient' see PARA 15 note 6.

7 As to the meaning of 'relevant function' see PARA 669 note 10.

8 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 4. As to the liability in tort of medical practitioners and health service bodies see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 196-205.

9 See the National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 1(2).

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### **671. Payments under the scheme.**

Where in any year, a payment falls to be made by any eligible body<sup>1</sup> in connection with a claim in respect of a qualifying liability<sup>2</sup>, the Secretary of State<sup>3</sup> may pay to or on behalf of that body an amount to be determined<sup>4</sup> by him<sup>5</sup>. However, no such payment may be made, except to such extent as the Secretary of State may determine, in respect of:

- 438 (1) any liability admitted by the eligible body without the consent in writing<sup>6</sup> of the Secretary of State<sup>7</sup>;
- 439 (2) any payment which falls to be made by the eligible body where that body has not complied with any condition imposed by the Secretary of State relating to the claim<sup>8</sup>;
- 440 (3) any payment into court which the eligible body has made without the prior consent in writing of the Secretary of State<sup>9</sup>;
- 441 (4) any liability determined by a court in proceedings conducted by the eligible body otherwise than in consultation with the Secretary of State<sup>10</sup>;
- 442 (5) any payment which falls to be made by an eligible body in consequence of that body having agreed, without the prior consent in writing of the Secretary of State, to be bound by the determination of any person<sup>11</sup> or body as to the making of a payment by that eligible body in respect of a qualifying liability<sup>12</sup>; or
- 443 (6) any payment, other than one to which head (5) above applies, which the eligible body has agreed to make otherwise than in the course of legal proceedings, or in consequence of that body having compromised legal proceedings, without the prior consent in writing of the Secretary of State<sup>13</sup>.

The amount of any payment must be determined by reference to<sup>14</sup>:

- 444 (a) where an award of damages has been made against the eligible body by a court, the amount of that award, together with the amounts of the legal and associated costs awarded to the claimant and of any such costs incurred by or on behalf of the eligible body<sup>15</sup>;
- 445 (b) where legal proceedings have been compromised by the eligible body, the amount of any sum paid or payable by the eligible body in relation to the claimant's claim for damages<sup>16</sup>, the eligible body's contribution towards any legal and associated costs incurred by the claimant<sup>17</sup>, and any such costs incurred by or on behalf of the eligible body<sup>18</sup>;
- 446 (c) where, in any legal proceedings, a court has declined to award damages against the eligible body, the amount of any legal and associated costs incurred by or on behalf of the eligible body, to the extent that such costs are not recoverable from the claimant<sup>19</sup>;
- 447 (d) where, otherwise than in the course of legal proceedings: (i) an eligible body has agreed to make a payment in settlement of a claim, the amount of that payment<sup>20</sup>; (ii) an eligible body has agreed to make any contribution towards legal or associated costs incurred by a person in connection with that person's claim against the eligible body in respect of a qualifying liability, the amount of that

contribution<sup>21</sup>; and the amount of any legal or associated costs incurred by or on behalf of the eligible body in connection with the claim<sup>22</sup>;

448 (e) where an eligible body has agreed to be bound by the determination of any person or body as to the making of a payment by the eligible body in respect of a qualifying liability, the amount of the payment and the amount of any legal or associated costs incurred by the person making the claim and any such costs incurred by or on behalf of the eligible body in connection with the claim<sup>23</sup>;

449 (f) where the eligible body has decided to make a payment into court, the amount of that payment<sup>24</sup>.

1 As to the meaning of 'eligible body' see PARA 669 note 1.

2 As to the meaning of 'qualifying liability' see PARA 670.

3 As to the Secretary of State see PARA 6 note 8.

4 In accordance with the National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3): see the text to notes 14-24.

5 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(1) (amended by SI 1997/526; SI 1999/1275). As to payments on account see PARA 672.

6 As to the meaning of 'writing' see PARA 7 note 2.

7 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(2)(a).

8 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(2)(aa) (reg 6(2)(aa), (ab) added by SI 1999/1275).

9 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(2)(ab) (as added: see note 8). As to payments into court see **CIVIL PROCEDURE** vol 11 (2009) PARA 729 et seq.

10 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(2)(b).

11 As to the meaning of 'person' see PARA 17 note 2.

12 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(2)(c) (reg 6(2)(c) substituted, (d) added, by SI 1997/526).

13 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(2)(d) (as added: see note 12).

14 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3) (amended by SI 1999/1275).

15 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(a) (amended by SI 1999/1275).

16 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(b)(i) (amended by SI 1999/1275).

17 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(b)(ii).

18 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(b)(iii) (amended by SI 1999/1275).

19 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(c) (amended by SI 1999/1275). This provision also refers to such costs as are not recoverable from the Legal Aid Board under the Legal Aid Act 1988 s 18 (repealed). The Legal Aid Board has been replaced by the Legal Services Commission: see further **LEGAL AID** vol 65 (2008) PARAS 2-3.

20 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(d)(i) (reg 6(3)(d) substituted, (e) added, by SI 1997/526).

21 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(d)(ii) (as substituted: see note 20).

22 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(d) (as substituted (see note 20); and amended by SI 1999/1275).

23 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(e) (as added (see note 20); and amended by SI 1999/1275).

24 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6(3)(f) (added by SI 1999/1275).

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## **672. Payments on account.**

Where, in any year, a payment (including a payment into court) falls to be made by an eligible body<sup>1</sup> in connection with a claim in respect of which a payment may become payable by the Secretary of State<sup>2</sup> under the Existing Liabilities Scheme<sup>3</sup>, the Secretary of State may make a payment on account of any amount which may become so payable by him<sup>4</sup>. Such payment on account may be made to or on behalf of the eligible body<sup>5</sup>. Where the amount of any such payment on account exceeds the amount of any payment the Secretary of State subsequently determines to make under the scheme the excess is recoverable from the eligible body<sup>6</sup>.

1 As to the meaning of 'eligible body' see PARA 669 note 1. As to payments into court see **CIVIL PROCEDURE** vol 11 (2009) PARA 729 et seq.

2 As to the Secretary of State see PARA 6 note 8.

3 Ie under the National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6: see PARA 671. As to the Existing Liabilities Scheme see PARA 668.

4 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6A(1) (reg 6A added by SI 1999/1275).

5 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6A(2) (as added: see note 4).

6 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 6A(3) (as added: see note 4).

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### **673. Provision of information.**

An eligible body<sup>1</sup> must, at such times and in such manner as the Secretary of State<sup>2</sup> may require, furnish to the Secretary of State such information as he may request about: (1) the nature of any relevant function<sup>3</sup> carried on, during any period falling before 1 April 1995 which the Secretary of State may specify, by the eligible body or by any body whose liabilities have been transferred to the eligible body<sup>4</sup>; and (2) any event of which the eligible body is aware which it considers might give rise to a qualifying liability<sup>5</sup>.

1 As to the meaning of 'eligible body' see PARA 669 note 1.

2 As to the Secretary of State see PARA 6 note 8.

3 As to the meaning of 'relevant function' see PARA 669 note 10.

4 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 7(a).

5 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 7(b). As to the meaning of 'qualifying liability' see PARA 670.



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#### **674. Publication of directions and guidance.**

The Secretary of State<sup>1</sup> must make available to eligible bodies<sup>2</sup>, in such form and at such times as he may consider appropriate: (1) any directions he may give, to any body directed<sup>3</sup> to carry out functions<sup>4</sup> in connection with the administration of the Existing Liabilities Scheme<sup>5</sup>, with respect to the discharge by that body of those functions<sup>6</sup>; and (2) any guidance he may give to that body as to the manner in which the scheme is to be administered<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'eligible body' see PARA 669 note 1.

3 Ie under the National Health Service Act 2006 s 71(6): see PARA 656.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 As to the Existing Liabilities Scheme see PARA 668. As to the administration of the scheme see PARA 668 note 5.

6 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 8(a); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

7 National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686, reg 8(b).

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#### ***D. LIABILITIES TO THIRD PARTIES SCHEME***

##### **675. The Liabilities to Third Parties Scheme.**

A scheme<sup>1</sup>, to be known as the Liabilities to Third Parties Scheme, is established whereby an eligible body<sup>2</sup> may<sup>3</sup> make provision to meet qualifying liabilities<sup>4</sup>. The scheme is administered by the Secretary of State<sup>5</sup>.

1 As to the power of the Secretary of State to establish such schemes see PARA 656. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'eligible body' see PARA 676 note 1.

3 See in accordance with the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, regs 3-11: see PARAS 676-685.

4 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 2. As to the meaning of 'qualifying liability' see PARA 677.

5 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 5. The Secretary of State's functions in relation to the scheme are delegated to the National Health Service Litigation Authority: see PARA 148.

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## **676. Eligible bodies.**

A body is eligible<sup>1</sup> to participate in the Liabilities to Third Parties Scheme<sup>2</sup> if it is an NHS trust<sup>3</sup>, an NHS foundation trust<sup>4</sup>, a strategic health authority<sup>5</sup>, a special health authority<sup>6</sup>, a primary care trust<sup>7</sup>, or the Health Protection Agency<sup>8</sup>.

1 'Eligible body' means a body of a kind described in the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 3, or a body which before 1 October 2002 was a health authority whose area was situated in England: reg 1(2) (definition amended by SI 2002/2469). As to the meaning of 'England' see PARA 6 note 2.

2 As to the Liabilities to Third Parties Scheme see PARA 675. As to membership of the scheme see PARA 678.

3 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 3(a). As to NHS trusts see PARA 155.

4 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 3(aa) (added by SI 2004/696). As to NHS foundation trusts see PARA 174.

5 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 3(b) (substituted by SI 2002/2469). As to strategic health authorities see PARA 94 et seq.

6 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 3(c). As to the special health authorities see PARA 136.

7 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 3(d) (added by SI 2000/2385). As to primary care trusts see PARA 111.

8 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 3(e) (added by SI 2005/604). As to the Health Protection Agency see PARA 213.

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### **677. Liabilities to which the scheme applies.**

The Liabilities to Third Parties Scheme<sup>1</sup> applies to any liability to any third party to which a member<sup>2</sup> is subject in respect of loss, damage or injury which arises out of the carrying out of any relevant function<sup>3</sup> of that member<sup>4</sup>, is a qualifying liability<sup>5</sup>, and is not a qualifying liability for the purposes of the Clinical Negligence Scheme<sup>6</sup>, the Existing Liabilities Scheme<sup>7</sup> or the Property Expenses Scheme<sup>8</sup>.

In respect of a member, a liability is a 'qualifying liability' if it falls within one or more of the following categories<sup>9</sup>:

- 450 (1) a liability in respect of personal injury<sup>10</sup> sustained by a relevant person<sup>11</sup> arising out of and in the course of his or her employment or engagement by the member<sup>12</sup>;
- 451 (2) a liability in respect of or consequent upon personal injury or loss arising out of or in connection with any breach of a duty of care or breach of any statutory duty or breach of a duty under any of the Occupiers' Liability Act 1957, the Occupiers' Liability Act 1984 or the Defective Premises Act 1972<sup>13</sup> in each case owed by the member to any person in consequence of any act or omission to act on the part of any relevant person<sup>14</sup>;
- 452 (3) a contractual liability in respect of personal injury to any person or damage to any property<sup>15</sup> of any third party<sup>16</sup>;
- 453 (4) a liability arising out of the act or omission to act on the part of a relevant person which is dishonest, fraudulent, criminal or malicious<sup>17</sup>;
- 454 (5) a liability arising out of the making or publishing of any defamatory statement (whether in written or oral form) by the member or a relevant person<sup>18</sup>;
- 455 (6) a contractual liability to make payment to any relevant person in connection with any personal injury sustained by the relevant person directly as a result of assault<sup>19</sup>;
- 456 (7) any legally enforceable liability in respect of or consequent upon personal injury or loss arising out of or in connection with any tortious or other wrongful act committed by any relevant person<sup>20</sup>;
- 457 (8) a liability arising out of any indemnity properly given by any member to any board member<sup>21</sup>;
- 458 (9) any liability in respect of any consequential or ancillary expense which arises in connection with any liability referred to in any of the above categories<sup>22</sup>.

The Secretary of State<sup>23</sup> and a member may agree: (a) a minimum level of liability which must arise before a payment or other provision in respect of such a liability may be made under the scheme<sup>24</sup>; and (b) an amount which is to be the maximum amount of any payment or other provision in respect of such a liability which may be made under the scheme<sup>25</sup>.

1 As to the Liabilities to Third Parties Scheme see PARA 675.

2 'Member' means an eligible body which is a member of the scheme: National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 1(2). As to the meaning of 'eligible body' see PARA 676 note 1.

3 'Relevant function' means the function of providing services in England or securing the provision of services for the purposes of the National Health Service Act 2006 or by virtue of the Health and Medicines Act 1988 s 7 (see PARA 503); see the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 1(2) (definition amended by SI 2005/604); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'functions' see PARA 6 note 3. As to the meaning of 'England' see PARA 6 note 2.

4 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(1)(a).

5 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(1)(b).

6 le for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251: see PARA 659.

7 le for the purposes of the National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686: see PARA 670.

8 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(1)(c). The Property Expenses Scheme is that established under the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874: see PARA 686. As to liabilities covered by that scheme see PARA 688.

9 See the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, regs 1(2), 4(2).

10 'Personal injury' includes bodily injury, death, disease, illness and nervous shock and is to be treated as including wrongful arrest, detention, imprisonment and malicious prosecution: National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2). As to the meaning of 'illness' see PARA 10 note 5. As to arrest and detention see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 908 et seq; **POLICE** vol 36(1) (2007 Reissue) PARA 482; **TORT** vol 97 (2010) PARAS 544, 545. As to malicious prosecution see **TORT** vol 97 (2010) PARA 627 et seq.

11 'Relevant person' means, in respect of a member, a person employed or engaged by that member and includes an employee or agent of the person so engaged: National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2) (definition amended by SI 2005/604). As to the meaning of 'person' see PARA 17 note 2.

12 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2)(i).

13 As to the Occupiers' Liability Act 1957 and the Occupiers' Liability Act 1984 see **NEGLIGENCE** vol 78 (2010) PARA 29 et seq. As to the Defective Premises Act 1972 see **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARAS 77-79; **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 475; **NEGLIGENCE** vol 78 (2010) PARAS 43-44.

14 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2)(ii).

- 15 As to the meaning of 'property' see PARA 4 note 9.
- 16 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2)(iii).
- 17 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2)(iv).
- 18 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2)(v). As to defamatory statements see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 10.
- 19 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2)(vi).
- 20 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2)(vii).
- 21 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2)(viii). 'Board member' means, in respect of a member, any member of the board of that member whether or not that person is an employee of that member: reg 4(2).
- 22 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(2)(ix).
- 23 As to the Secretary of State see PARA 6 note 8.
- 24 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(3)(a).
- 25 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 4(3)(b).

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### **678. Membership of the scheme.**

An eligible body<sup>1</sup> which, before 31 March 1999, gave notice in writing<sup>2</sup> to the Secretary of State<sup>3</sup> of its wish to participate in the Liabilities to Third Parties Scheme<sup>4</sup> with effect from 1 April 1999, or such later date being not later than 31 March 2000 as the Secretary of State may determine, became a member<sup>5</sup> of the scheme with effect from 1 April 1999 or, as the case may be, such later date<sup>6</sup>. An eligible body to which the previous provision does not apply which wishes to participate in the scheme during any period beginning after 31 March 2000 must apply to the Secretary of State to be admitted as a member<sup>7</sup>.

An applicant<sup>8</sup> must provide such information as the Secretary of State may in writing request it to provide, as respects: (1) the nature of its relevant functions<sup>9</sup>; (2) the number of employees of the applicant who are engaged in its performance of any relevant function, or such part of any relevant function as the Secretary of State may specify, and the qualifications and experience of those employees<sup>10</sup>; (3) the nature and extent of any claims made against the applicant in respect of any qualifying liability<sup>11</sup> arising from loss, damage or injury sustained by third parties as a result of the carrying out by the applicant of any relevant function<sup>12</sup>; and (4) such other information as he may request in connection with the application<sup>13</sup>.

The Secretary of State must, having regard to the information provided by the applicant, and to such other factors as he considers to be material to the application, determine whether or not the applicant should be admitted as a member, and must notify the applicant of his decision in writing<sup>14</sup>.

1 As to the meaning of 'eligible body' see PARA 676 note 1.

2 As to the meaning of 'writing' see PARA 7 note 2.

3 As to the Secretary of State see PARA 6 note 8.

4 As to the Liabilities to Third Parties Scheme see PARA 675.

5 As to the meaning of 'member' see PARA 677 note 2.

6 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(1).

7 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(2). An application must be made in writing in such form as the Secretary of State may require (reg 6(3)(a)) and specify the date that the eligible body wishes its membership to begin (reg 6(3)(b) (substituted by SI 2000/2385)).

8 'Applicant' means an eligible body which has applied under the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(1) or (2) (see the text to notes 1-7) to be admitted as a member, and 'application' must be construed accordingly: reg 6(7).

9 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(4)(a). As to the meaning of 'relevant function' see PARA 677 note 3.

10 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(4)(b).

11 As to the meaning of 'qualifying liability' see PARA 677.

12 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(4)(c).

13 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(4)(d).

14 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(5). Where the application of an eligible body under reg 6(2) (see the text to note 7) has been successful, that body must be admitted as a member with effect from such date as may be determined by the Secretary of State: reg 6(6) (amended by SI 2000/2385). As to termination of membership see PARA 679.



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### **679. Termination of membership.**

A member<sup>1</sup> may terminate its participation in the Liabilities to Third Parties Scheme<sup>2</sup> on 31 March in any year by giving not less than 12 months<sup>3</sup> notice in writing<sup>4</sup> to that effect to the Secretary of State<sup>5</sup>. However, a member's participation in the scheme may not be terminated, by such notice: (1) where its membership took effect on a date on or after 1 April 1999 and not later than 31 March 2000, before 31 March 2002<sup>6</sup>; and (2) in any other case, before the expiry of three consecutive membership years<sup>7</sup> beginning on the date on which<sup>8</sup> its membership takes effect<sup>9</sup>.

Where:

- 459 (a) any payment which a member is<sup>10</sup> liable to make to the Secretary of State has remained unpaid for a period of not less than 28 days beginning on the date on which the payment should have been made<sup>11</sup>;
- 460 (b) a member has failed to provide, within 28 days, or such further period as the Secretary of State may in writing allow, of being requested to do so, any information which it is required<sup>12</sup> to provide<sup>13</sup>; or
- 461 (c) the continued membership of any member would, in the opinion of the Secretary of State, be detrimental to the efficient administration of the scheme or to the interests of other members<sup>14</sup>,

the Secretary of State may give notice in writing to that member that its participation in the scheme is to cease on a date falling not less than 28 days after that on which the notice is given, and that member's participation in the scheme is, unless the Secretary of State in writing withdraws the notice before that date, terminated on that date<sup>15</sup>.

1 As to the meaning of 'member' see PARA 677 note 2.

2 As to the Liabilities to Third Parties Scheme see PARA 675. As to membership of the scheme see PARA 678.

3 As to the meaning of 'month' see PARA 28 note 16.

4 As to the meaning of 'writing' see PARA 7 note 2.

5 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 7(1). As to the Secretary of State see PARA 6 note 8.

6 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 7(2)(a).

7 'Membership year' means, in relation to an eligible body, any period of 12 months beginning on 1 April during any part of which that body is a member of the scheme: National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 1(2). As to the meaning of 'eligible body' see PARA 676 note 1.

8 Ie by virtue of the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(6): see PARA 678.

9 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 7(2)(b).

10 Ie by virtue of the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8: see PARA 680.

11 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 7(3)(a).

12 Ie by virtue of the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 10: see PARA 684.

13 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 7(3)(b).

14 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 7(3)(c).

15 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 7(3).

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#### **680. Members' contributions to the scheme.**

A member<sup>1</sup> of the Liabilities to Third Parties Scheme<sup>2</sup> must pay to the Secretary of State<sup>3</sup> in respect of each membership year<sup>4</sup> such amount as is determined in relation to that member, and notified to it, in accordance with the following provisions<sup>5</sup>. When determining in relation to any member the amount of the payment to be so made, the Secretary of State must have regard to: (1) his estimate of the total amount which will<sup>6</sup> fall to be paid during that membership year in respect of all qualifying liabilities<sup>7</sup> under the scheme<sup>8</sup>; (2) the nature of the member's relevant functions<sup>9</sup>; (3) the number of employees of the member who are engaged in its performance of a relevant function, or any part of such a function, and the qualifications and experience of those employees<sup>10</sup>; (4) any agreement between the Secretary of State and the member that the provisions relating to liabilities incurred before membership<sup>11</sup> or falling to be met after termination of membership<sup>12</sup> are not to apply in relation to certain liabilities incurred by the member<sup>13</sup>; and (5) his assessment of (a) the likely effectiveness of any steps being taken, or to be taken, by the member, as respects the manner in which it exercises any relevant function, with a view to reducing the incidence of qualifying liabilities in connection with that function<sup>14</sup>; and (b) the effectiveness of any such steps which may previously have been taken<sup>15</sup>. The Secretary of State may also have regard to any other factor concerning that or any other member or the scheme which he considers to be material to his determination<sup>16</sup>.

Where, after notice has been given to a member in relation to any membership year, it appears to the Secretary of State that: (i) the amount specified in the notice was incorrectly calculated<sup>17</sup>, or determined by reference to information which was incorrect<sup>18</sup>; or (ii) in the light of further information which has become available to him, the determination of that amount ought to be reconsidered<sup>19</sup>, he must reconsider the determination and may, at any time before the end of the membership year to which it relates, revise the amount of the payment to be made<sup>20</sup>.

Any amount which falls to be paid by a member<sup>21</sup> must be paid by the member to the Secretary of State: (A) in relation to its first membership year, by no later than eight months from the date of receipt by the Secretary of State<sup>22</sup> of its application<sup>23</sup>; (B) in relation to its second membership year, by no later than 1 August in that year<sup>24</sup>; and (c) in relation to any subsequent membership year, by no later than 30 November in the preceding year<sup>25</sup>.

1 As to the meaning of 'member' see PARA 677 note 2.

2 As to the Liabilities to Third Parties Scheme see PARA 675.

3 As to the Secretary of State see PARA 6 note 8.

4 As to the meaning of 'membership year' see PARA 679 note 7.

5 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(1). The Secretary of State must give notice in writing to each member of the amount of the payment which it is to make: (1) as respects its first membership year, by no later than six months from the date of receipt by the Secretary of State of its application in accordance with reg 6(2) (see PARA 678) (see reg 8(3)(b)(i) (reg 8(3)(b) substituted, 3(c) added, by SI 2000/2385)); (2) as respects its second membership year, by no later than 1 July in that year (National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(3)(b)(ii) (as so substituted)); and (3) as respects any subsequent membership year, by no later than 31 October in the preceding year (reg 8(3)(c) (as so added)). 'Preceding year' means, in relation to a membership year, the period of 12 months immediately preceding that membership year: reg 1(2). As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'month' see PARA 28 note 16.

6 le by virtue of the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9: see PARA 681.

7 As to the meaning of 'qualifying liability' see PARA 677.

8 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(2)(a).

9 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(2)(b). As to the meaning of 'relevant function' see PARA 677 note 3.

10 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(2)(c).

11 le the provisions of the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(b): see PARA 681.

12 le the provisions of the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(c): see PARA 681.

13 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(2)(d).

14 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(2)(e)(i).

15 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(2)(e)(ii).

16 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(2).

17 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(4)(a)(i).

18 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(4)(a)(ii).

19 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(4)(b).

20 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(4). Where an amount is so revised, the Secretary of State must give to the member notice in writing of the revised amount, and reg 8(4) has effect in relation to that amount as if the notice had been given under reg 8(3) (see note 5): reg 8(5).

21 *Ie* under the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(1): see the text to notes 1-5.

22 *Ie* in accordance with the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 6(2): see PARA 678.

23 See the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(6)(b)(i) (reg 8(6)(b) substituted, (6)(c) added, by SI 2000/2385).

24 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(6)(b)(ii) (as substituted: see note 23).

25 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 8(6)(c) (as added: see note 23).

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### **681. Payments under the scheme.**

Where, in any membership year<sup>1</sup>, a payment falls to be made by any member<sup>2</sup> of the Liabilities to Third Parties Scheme in connection with a claim in respect of a qualifying liability<sup>3</sup>, the Secretary of State<sup>4</sup> may pay to or on behalf of that member an amount determined<sup>5</sup> by him<sup>6</sup>.

No payment may be made in respect of any liability which falls to be met after a member has given notice<sup>7</sup> to terminate its participation in the scheme, unless the Secretary of State is satisfied that the liability would have fallen to be met at that time irrespective of the member's decision to give such notice<sup>8</sup>.

No payment may be made in respect of any liability incurred by an eligible body before it became a member, unless<sup>9</sup>: (1) the claim by a third party against the member in respect of that liability was made after it became a member<sup>10</sup>; (2) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date<sup>11</sup>, that the claim had been made<sup>12</sup>; (3) the Secretary of State agreed, no later than the date on which the member became a member, that this provision does not apply so as to preclude a payment in respect of any claim in relation to which heads (1) and (2) above are satisfied<sup>13</sup>; and (4) that agreement remains in force at the date on which the claim falls to be met by that member<sup>14</sup>.

No payment may be made in respect of any liability which falls to be met after the date of the termination of the member's participation in the scheme, unless: (a) the claim by a third party against the member in respect of that liability was made prior to that date<sup>15</sup>; (b) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date, that the claim had been made<sup>16</sup>; (c) prior to the date of termination of the member's participation in the scheme, the Secretary of State agreed that this provision does not apply so as to preclude a payment in respect of any claim in relation to which heads (a) and (b) above are satisfied<sup>17</sup>; and (d) that agreement remained in force at the date of termination<sup>18</sup>.

No payment may be made except to such extent as the Secretary of State may determine, in respect of:

- 462 (i) any payment made by or liability admitted by any member without the Secretary of State's consent<sup>19</sup>;
- 463 (ii) any liability of an amount which is less than that for the time being agreed between the Secretary of State and the member as the minimum amount in respect of which payment is to be made under the scheme<sup>20</sup>;
- 464 (iii) any liability of an amount in excess of such amount for the time being agreed by the Secretary of State and the member as the maximum amount in respect of which a payment in respect of such liability may be made under the scheme, to the extent of that excess<sup>21</sup>; and
- 465 (iv) any liability where the member has not complied with any condition imposed by the Secretary of State relating to that liability<sup>22</sup>.

No payment may be made in respect of any liability which is of a nature in respect of which the Secretary of State has in respect of all members and in respect of the relevant membership year determined that the same is not eligible for payment under the scheme<sup>23</sup>.

- 1 As to the meaning of 'membership year' see PARA 679 note 7.
- 2 In the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9 'member' includes an eligible body whose participation in the Liabilities to Third Parties Scheme has been terminated and in respect of whom the conditions specified in reg 9(2)(c)(iii) and (iv) (see the text to notes 17-18) are satisfied: reg 9(6)(b). As to the meaning of 'member' generally see PARA 677 note 2. As to the meaning of 'eligible body' see PARA 676 note 1. As to the Liabilities to Third Parties Scheme see PARA 675.
- 3 As to the meaning of 'qualifying liability' see PARA 677.
- 4 As to the Secretary of State see PARA 6 note 8.
- 5 Ie in accordance with the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3): see PARA 682.
- 6 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(1). As to payments on account see PARA 683.
- 7 Ie under the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 7(1): see PARA 679.
- 8 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(a).
- 9 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(b) (reg 9(2)(b), (b)(i), (b)(iii) amended by SI 2000/2385).
- 10 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(b)(i) (as amended: see note 9).
- 11 'Qualifying date' means the date falling 14 days after that on which the member became aware that a claim had been made, or after that on which, in the opinion of the Secretary of State, the member ought to have become aware of that fact, whichever is the later: National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(6)(c).
- 12 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(b)(ii).
- 13 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(b)(iii) (as amended: see note 9).
- 14 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(b) (iv).
- 15 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(c)(i).

- 16 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(c)(ii).
- 17 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(c)(iii).
- 18 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(c)(iv).
- 19 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(d)(i).
- 20 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(d)(ii).
- 21 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(d)(iii).
- 22 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(d)  
(iv).
- 23 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(2)(e).



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## **682. Determination of amounts to be paid.**

The amount of any payment to be paid by the Secretary of State<sup>1</sup> to or on behalf of any member<sup>2</sup> of the Liabilities to Third Parties Scheme<sup>3</sup> must be determined by reference to:

- 466 (1) where an award of damages is made against a member by a court, the amount of that award, together with the amounts of the legal and associated costs awarded to the claimant and of any such costs incurred by or on behalf of the member<sup>4</sup>;
- 467 (2) where legal proceedings have been compromised by the member, the amount of any sum paid or payable where properly payable by the member in relation to the claimant's claim for damages<sup>5</sup>, and the member's contribution towards any legal and associated costs incurred by or on behalf of the claimant<sup>6</sup>, and any such costs incurred by the member<sup>7</sup>;
- 468 (3) where in any legal proceedings a court has declined to award damages against the member, the amount of any legal and associated costs incurred by or on behalf of the member to the extent that such costs are not recoverable from the claimant<sup>8</sup>;
- 469 (4) where, otherwise than in the course of legal proceedings: (a) a member has agreed to make a payment in settlement of a claim, the amount of that payment<sup>9</sup>; and (b) a member has agreed to make any contribution towards legal or associated costs incurred by a person<sup>10</sup> in connection with that person's claim against the member in respect of a qualifying liability<sup>11</sup>, the amount of that contribution<sup>12</sup>; and the amount of any legal or associated costs incurred by or on behalf of the member in connection with the claim<sup>13</sup>;
- 470 (5) where a member has agreed to be bound by the determination of any person or body as to the making of a payment by that member in respect of a qualifying liability, the amount of the payment and the amount of any legal or associated costs incurred by the person making the claim and any such costs incurred by or on behalf of the member in connection with the claim<sup>14</sup>;
- 471 (6) where the member has decided to make a payment into the court, the amount of that payment<sup>15</sup>;
- 472 (7) in respect of any contractual obligation, the amount properly payable under the relevant contract including the amount of any legal or associated costs incurred by or on behalf of the member and by the other contracting party<sup>16</sup>.

<sup>1</sup> ie under the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(1): see PARA 681. As to the Secretary of State see PARA 6 note 8.

<sup>2</sup> As to the meaning of 'member' see PARA 681 note 2.

<sup>3</sup> As to the Liabilities to Third Parties Scheme see PARA 675.

- 4 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(a).
- 5 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(b)(i).
- 6 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(b)(ii).
- 7 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(b)(iii).
- 8 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(c). This provision also refers to such costs as are not recoverable from the Legal Aid Board under the Legal Aid Act 1988 s 18 (repealed). The Legal Aid Board has been replaced by the Legal Services Commission: see further **LEGAL AID** vol 65 (2008) **PARAS** 2-3.
- 9 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(d)(i).
- 10 As to the meaning of 'person' see **PARA** 17 note 2.
- 11 As to the meaning of 'qualifying liability' see **PARA** 677.
- 12 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(d)(ii).
- 13 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(d).
- 14 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(e).
- 15 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(f). As to payments into court see **CIVIL PROCEDURE** vol 11 (2009) **PARA** 729 et seq.
- 16 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(3)(g).

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### **683. Payments on account.**

Where in any membership year<sup>1</sup> a payment (including a payment into court) falls to be made by a member<sup>2</sup> of the Liabilities to Third Parties Scheme<sup>3</sup> in connection with a claim in respect of which a payment may become payable by the Secretary of State<sup>4</sup>, the Secretary of State may make a payment on account of any such amount payable by him<sup>5</sup>. Where the amount of any payment on account exceeds the amount of any payment the Secretary of State subsequently determines to make<sup>6</sup> the excess is recoverable from the member<sup>7</sup>.

1 As to the meaning of 'membership year' see PARA 679 note 7.

2 As to the meaning of 'member' see PARA 681 note 2. As to payments into court see **CIVIL PROCEDURE** vol 11 (2009) PARA 729 et seq.

3 As to the Liabilities to Third Parties Scheme see PARA 675.

4 Ie under the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9: see PARA 681. As to the Secretary of State see PARA 6 note 8.

5 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(4).

6 Ie under the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9: see PARA 681.

7 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 9(5).

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#### **684. Provision of information.**

A member<sup>1</sup> of the Liabilities to Third Parties Scheme<sup>2</sup> must, at such times and in such manner as the Secretary of State<sup>3</sup> may require, furnish to the Secretary of State such information as he may request, about: (1) the nature of any relevant function<sup>4</sup> being carried on, or to be carried on, by the member in any membership year<sup>5</sup> which the Secretary of State may specify<sup>6</sup>; (2) the number of employees of the member who are engaged in its performance of any relevant function, or such part of any relevant function as the Secretary of State may specify, and the qualifications and experience of those employees<sup>7</sup>; and (3) any event of which the member is aware which it considers might give rise to a qualifying liability<sup>8</sup>.

1 As to the meaning of 'member' see PARA 677 note 2.

2 As to the Liabilities to Third Parties Scheme see PARA 675.

3 As to the Secretary of State see PARA 6 note 8.

4 As to the meaning of 'relevant function' see PARA 677 note 3.

5 As to the meaning of 'membership year' see PARA 679 note 7.

6 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 10(a).

7 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 10(b).

8 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 10(c). As to the meaning of 'qualifying liability' see PARA 677.

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#### **685. Availability of directions and guidance.**

The Secretary of State<sup>1</sup> must make available to eligible bodies<sup>2</sup>, in such form and at such times as he may consider appropriate: (1) any directions he may give, to any body directed<sup>3</sup> to carry out functions<sup>4</sup> in connection with the administration of the Liabilities to Third Parties Scheme<sup>5</sup>, with respect to the discharge by that body of those functions<sup>6</sup>; (2) any guidance he may give to that body as to the manner in which the scheme is to be administered<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'eligible body' see PARA 676 note 1.

3 Ie under the National Health Service Act 2006 s 71(6): see PARA 656.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 As to the Liabilities to Third Parties Scheme see PARA 675. As to the administration of the scheme see PARA 675 note 5.

6 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 11(a).

7 National Health Service (Liabilities to Third Parties Scheme) Regulations 1999, SI 1999/873, reg 11(b).

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## ***E. PROPERTY EXPENSES SCHEME***

### **686. The Property Expenses Scheme.**

A scheme<sup>1</sup>, known as the Property Expenses Scheme, is established whereby an eligible body<sup>2</sup> may<sup>3</sup> make provision to meet qualifying expenses<sup>4</sup>. The scheme is administered by the Secretary of State<sup>5</sup>.

1 As to the power of the Secretary of State to establish such schemes see PARA 656. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'eligible body' see PARA 687 note 1.

3 See in accordance with the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, regs 3-11: see PARAS 687-694.

4 See the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 2. As to the meaning of 'qualifying expense' see PARA 688.

5 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 5. The Secretary of State's functions in relation to the scheme are delegated to the National Health Service Litigation Authority: see PARA 148.

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### **687. Eligible bodies.**

A body is eligible<sup>1</sup> to participate in the Property Expenses Scheme<sup>2</sup> if it is an NHS trust<sup>3</sup>, an NHS foundation trust<sup>4</sup>, a strategic health authority<sup>5</sup>, a special health authority<sup>6</sup>, a primary care trust<sup>7</sup>, or the Health Protection Agency<sup>8</sup>.

1 'Eligible body' means a body of a kind described in the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 3, or a body which before 1 October 2002 was a health authority whose area is situated in England: reg 1(2) (definition amended by SI 2002/2469). As to the meaning of 'England' see PARA 6 note 2.

2 As to the Property Expenses Scheme see PARA 686.

3 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 3(a). As to NHS trusts see PARA 155.

4 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 3(aa) (added by SI 2004/696). As to NHS foundation trusts see PARA 174.

5 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 3(b) (substituted by SI 2002/2469). As to strategic health authorities see PARA 94 et seq.

6 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 3(c). As to the special health authorities see PARA 136.

7 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 3(d) (added by SI 2000/2342). As to primary care trusts see PARA 111.

8 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 3(e) (added by SI 2005/604). As to the Health Protection Agency see PARA 213.

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### **688. Expenses to which the scheme applies.**

The Property Expenses Scheme<sup>1</sup> applies to any expense which is incurred by a member<sup>2</sup>: (1) arising from any loss or damage to its property<sup>3</sup>; and (2) which is not an expense arising from a liability which is a qualifying liability for the purposes of the Clinical Negligence Scheme<sup>4</sup>, the Existing Liabilities Scheme<sup>5</sup> or the Liabilities to Third Parties Scheme<sup>6</sup>. Without prejudice to the generality of the above, the expenses to which the scheme applies include expenses arising from:

- 473 (a) loss of or damage to property of the member or for which the member was responsible in the course of a relevant function<sup>7</sup>;
- 474 (b) loss of use of equipment or other property necessitating immediate repair or replacement of the same before the member can resume normal working<sup>8</sup>;
- 475 (c) loss or damage to property arising from a deliberate act of fraud or dishonesty<sup>9</sup>; and
- 476 (d) any consequential or ancillary expense which arises in connection with any expense referred to in any of the above categories or in heads (1) and (2) above<sup>10</sup>.

Any such expense<sup>11</sup> is known as a 'qualifying expense'<sup>12</sup>.

The Secretary of State<sup>13</sup> and a member may agree: (i) a minimum level of expense which must arise before a payment or other provision in respect of such an expense may be made under the scheme<sup>14</sup>; and (ii) an amount which is to be the maximum amount of any payment or other provision in respect of such an expense which may be made under the scheme<sup>15</sup>.

1 As to the Property Expenses Scheme see PARA 686.

2 'Member' means an eligible body which is a member of the Property Expenses Scheme: National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 1(2). As to the meaning of 'eligible body' see PARA 687 note 1.

3 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 4(1)(a). As to the meaning of 'property' see PARA 4 note 9.

4 Ie for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996, SI 1996/251: see para 659.

5 Ie for the purposes of the National Health Service (Existing Liabilities Scheme) Regulations 1996, SI 1996/686: see para 670.

6 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 4(1)(b). The Liabilities to Third Parties Scheme is that established under the National Health Service (Liabilities to Third



Parties Scheme) Regulations 1999, SI 1999/873. As to the meaning of 'qualifying liability' for the purposes of those regulations see PARA 677.

7 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 4(2)(a). 'Relevant function' means the function of providing services in England or securing the provision of services for the purposes of the National Health Service Act 2006 or by virtue of the Health and Medicines Act 1988 s 7 (see PARA 503): see the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 1(2) (definition amended by SI 2005/604); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'functions' see PARA 6 note 3. As to the meaning of 'England' see PARA 6 note 2.

8 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 4(2)(b).

9 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 4(2)(c).

10 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 4(2)(d).

11 Is an expense of a kind described in the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 4(1) and (2): see the text to notes 1-10.

12 See the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 1(2).

13 As to the Secretary of State see PARA 6 note 8.

14 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 4(3)(a).

15 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 4(3)(b).

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### **689. Membership of the scheme.**

An eligible body<sup>1</sup> which, before 31 March 1999, gave notice in writing<sup>2</sup> to the Secretary of State<sup>3</sup> of its wish to participate in the Property Expenses Scheme<sup>4</sup> with effect from 1 April 1999, or such later date being not later than 31 March 2000 as the Secretary of State may determine, became a member of the scheme with effect from 1 April 1999, or, as the case may be, such later date<sup>5</sup>. An eligible body not covered by this provision which wishes to participate in the scheme during any period beginning after 31 March 2000 must apply to the Secretary of State to be admitted as a member<sup>6</sup>.

An applicant<sup>7</sup> must provide such information as the Secretary of State may in writing request it to provide, as respects: (1) the nature of its relevant functions<sup>8</sup>; (2) the number of employees of the applicant who are engaged in its performance of any relevant function, or such part of any relevant function as the Secretary of State may specify, and the qualifications and experience of those employees<sup>9</sup>; (3) the nature and extent of qualifying expenses<sup>10</sup> incurred by the applicant and the date of that incurring<sup>11</sup>; and (4) such other information as he may request in connection with the application<sup>12</sup>.

The Secretary of State must, having regard to the information provided by the applicant, and to such other factors as he considers to be material to the application, determine whether or not the applicant should be admitted as a member, and must notify the applicant of his decision in writing<sup>13</sup>.

1 As to the meaning of 'eligible body' see PARA 687 note 1.

2 As to the meaning of 'writing' see PARA 7 note 2.

3 As to the Secretary of State see PARA 6 note 8.

4 As to the Property Expenses Scheme see PARA 686.

5 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(1). As to termination of membership see PARA 690.

6 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(2). An application must be made in writing in such form as the Secretary of State may require (reg 6(3)(a)); and specify the date that the eligible body wishes its membership to begin (reg 6(3)(b) (substituted by SI 2000/2342)).

7 'Applicant' means an eligible body which has applied under the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(1) or (2) (see the text to notes 1-6) to be admitted as a member, and 'application' must be construed accordingly: reg 6(7).

8 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(4)(a). As to the meaning of 'relevant function' see PARA 688 note 7.

9 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(4)(b).

10 As to the meaning of 'qualifying expense' see PARA 688.

11 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(4)(c).

12 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(4)(d).

13 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(5). Where the application of an eligible body has been successful under reg 6(2) (see the text to note 6), that body is admitted as a member with effect from such date as may be determined by the Secretary of State: reg 6(6) (amended by SI 2000/2342).

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## **690. Termination of membership.**

A member<sup>1</sup> may terminate its participation in the Property Expenses Scheme<sup>2</sup> on 31 March in any year by giving not less than 12 months<sup>3</sup> notice in writing<sup>4</sup> to that effect to the Secretary of State<sup>5</sup>. However, a member's participation in the scheme may not be terminated by such notice before the expiry of three consecutive membership years<sup>6</sup> beginning on the date on which<sup>7</sup> its membership takes effect<sup>8</sup>.

Where:

- 477 (1) any payment which a member is<sup>9</sup> liable to make to the Secretary of State has remained unpaid for a period of not less than 28 days beginning on the date on which the payment should have been made<sup>10</sup>;
- 478 (2) a member has failed to provide, within 28 days, or such further period as the Secretary of State may in writing allow, of being requested to do so, any information which it is required<sup>11</sup> to provide<sup>12</sup>; or
- 479 (3) the continued membership of any member would, in the opinion of the Secretary of State, be detrimental to the efficient administration of the scheme or to the interest of other members<sup>13</sup>,

the Secretary of State may give notice in writing to that member that its participation in the scheme is to cease on a date falling not less than 28 days after that on which the notice is given, and that member's participation in the scheme is, unless the Secretary of State in writing withdraws the notice before that date, terminated on that date<sup>14</sup>.

1 As to the meaning of 'member' see PARA 688 note 2.

2 As to the Property Expenses Scheme see PARA 686. As to membership of the scheme see PARA 689.

3 As to the meaning of 'month' see PARA 28 note 16.

4 As to the meaning of 'writing' see PARA 7 note 2.

5 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 7(1). As to the Secretary of State see PARA 6 note 8.

6 'Membership year' means, in relation to an eligible body, any period of 12 months beginning on 1 April during any part of which that body is a member of the scheme: National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 1(2). As to the meaning of 'eligible body' see PARA 687 note 1.

7     le by virtue of the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(6): see PARA 689.

8     See the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 7(2)(b).

9     le by virtue of the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8: see PARA 691.

10    National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 7(3)(a).

11    le by virtue of the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 10: see PARA 693.

12    National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 7(3)(b).

13    National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 7(3)(c).

14    National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 7(3).

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### **691. Members' contributions to the scheme.**

A member<sup>1</sup> of the Property Expenses Scheme<sup>2</sup> must pay to the Secretary of State<sup>3</sup> in respect of each membership year<sup>4</sup> such amount as is determined in relation to that member, and notified to it<sup>5</sup>. When determining in relation to any member the amount of the payment to be made, the Secretary of State must have regard to: (1) his estimate of the total amount which will<sup>6</sup> fall to be paid during that membership year in respect of all qualifying expenses<sup>7</sup> under the scheme<sup>8</sup>; (2) the nature of the member's relevant functions<sup>9</sup>; (3) the number of employees of the member who are engaged in its performance of a relevant function, or any part of such a function, and the qualifications and experience of those employees<sup>10</sup>; (4) any agreement between the Secretary of State and the member that the provisions relating to expenses incurred before membership<sup>11</sup> or falling to be met after termination of membership<sup>12</sup> are not to apply in relation to certain expenses incurred by the member<sup>13</sup>; and (5) his assessment of (a) the likely effectiveness of any steps being taken, or to be taken, by the member, as respects the manner in which it exercises any relevant function, with a view to reducing the incidence of qualifying expenses in connection with that function<sup>14</sup>; and (b) the effectiveness of any such steps which may previously have been taken<sup>15</sup>. The Secretary of State may also have regard to any other factor concerning that or any other member or the scheme which he considers to be material to his determination<sup>16</sup>.

Where, after notice has been given to a member in relation to any membership year, it appears to the Secretary of State that: (i) the amount specified in the notice was incorrectly calculated<sup>17</sup>, or determined by reference to information which was incorrect<sup>18</sup>; or (ii) in the light of further information which has become available to him, the determination of that amount ought to be reconsidered<sup>19</sup>, he must reconsider the determination and may, at any time before the end of the membership year to which it relates, revise the amount of the payment to be made<sup>20</sup>.

Any amount which falls to be paid by a member must be paid by the member to the Secretary of State: (A) in relation to its first membership year, by no later than eight months from the date of receipt by the Secretary of State<sup>21</sup> of its application<sup>22</sup>; (B) in relation to its second membership year, by not later than 1 August in that year<sup>23</sup>; and (C) in relation to any subsequent membership year, by no later than 30 November in the preceding year<sup>24</sup>.

1 As to the meaning of 'member' see PARA 688 note 2.

2 As to the Property Expenses Scheme see PARA 686.

3 As to the Secretary of State see PARA 6 note 8.

4 As to the meaning of 'membership year' see PARA 690 note 6.

5 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(1). The Secretary of State must give notice in writing to each member of the amount of the payment which it is to make, where the member was admitted to the scheme on or after 1 April 2000: (1) as respects its first membership year, by no later than six months from the date of receipt by the Secretary of State of its application in accordance with reg 6(2) (see PARA 689) (reg 8(3)(b)(i) (reg 8(3)(b) substituted, (3)(c) added, by SI 2000/2342)); (2) as respects its second membership year, by no later than 1 July in that year (National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(3)(b)(ii) (as so substituted)); and (3) as respects any subsequent membership year, by no later than 31 October in the preceding year (reg 8(3)(c) (as so added)). As to the meaning of 'writing' see PARA 7 note 2. As to the meaning of 'month' see PARA 28 note 16. 'Preceding year' means, in relation to a membership year, the period of 12 months immediately preceding that membership year: reg 1(2).

6 Ie by virtue of the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9: see PARA 692.

7 As to the meaning of 'qualifying expense' see PARA 688.

8 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(2)(a).

9 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(2)(b). As to the meaning of 'relevant function' see PARA 688 note 7.

10 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(2)(c).

11 Ie the provisions of the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(b): see PARA 692.

12 Ie the provisions of the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(c): see PARA 692.

13 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(2)(d).

14 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(2)(e)(i).

15 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(2)(e)(ii).

16 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(2).

17 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(4)(a)(i).

18 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(4)(a)(ii).

19 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(4)(b).

20 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(4). Where an amount is so revised, the Secretary of State must give to the member notice in writing of the revised amount, and reg 8(4) has effect in relation to that amount as if the notice had been given under reg 8(3) (see note 5): reg 8(5).

21 In accordance with the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 6(2): see PARA 689.

22 See the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(6)(b)(i) (reg 8(6)(b) substituted, (6)(c) added by SI 2000/2342).

23 See the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(6)(b)(ii) (as substituted: see note 22).

24 See the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 8(6)(c) (as added: see note 22).



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## **692. Payments under the scheme.**

Where, in any membership year<sup>1</sup>, a qualifying expense<sup>2</sup> under the Property Expenses Scheme<sup>3</sup> arises, the Secretary of State<sup>4</sup> may: (1) make a payment in respect of that expense to the member<sup>5</sup>; or (2) make any other provision towards meeting that expense as he considers appropriate<sup>6</sup>; and the making, and the manner of making, of such payment or provision must be agreed between the member and the Secretary of State or in default of such agreement determined by the Secretary of State<sup>7</sup>.

The Secretary of State must not meet any expense of a member which falls to be met after a member has given notice<sup>8</sup> to terminate its participation in the scheme, unless the Secretary of State is satisfied that the expense would have fallen to be met at that time irrespective of the member's decision to give such notice<sup>9</sup>.

The Secretary of State must not meet any expense of a member which has been incurred by an eligible body before it became a member<sup>10</sup>, unless (a) some part of that expense was to be met by the member after it became a member<sup>11</sup>; (b) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date<sup>12</sup>, of the relevant expense<sup>13</sup>; (c) the Secretary of State agreed, no later than the date on which the member became a member, that this provision does not apply so as to preclude the making of a payment or other provision<sup>14</sup> in respect of any particular expense in relation to which heads (a) and (b) above are satisfied<sup>15</sup>; and (d) that agreement remains in force at the date on which the relevant expense falls to be met by the member<sup>16</sup>.

The Secretary of State must not meet any expense of a member which falls to be met after the date of the termination of the member's participation in the scheme, unless: (i) the relevant expense was incurred by the member prior to that date<sup>17</sup>; (ii) the Secretary of State is satisfied that the member informed him, by no later than the qualifying date, of the expense<sup>18</sup>; (iii) prior to the date of termination of the member's participation in the scheme, the Secretary of State agreed that this provision does not apply so as to preclude the making of a payment or other provision<sup>19</sup> in respect of any expense in relation to which heads (i) and (ii) above are satisfied<sup>20</sup>; and (iv) that agreement remained in force at the date of termination<sup>21</sup>.

The Secretary of State must not meet any expense of a member except to such extent as the Secretary of State may determine, in respect of: (A) any expense of an amount which is less than that for the time being agreed between the Secretary of State and the member as the minimum amount in respect of which payment may be made under the scheme<sup>22</sup>; (B) any expense to the extent that it exceeds such amount for the time being agreed by the Secretary of State and the member as the maximum amount in respect of which a payment in respect of such an expense may be made under the scheme<sup>23</sup>; and (C) where the member has not complied with any condition imposed by the Secretary of State relating to that expense<sup>24</sup>.

The Secretary of State must not meet any expense of a member which is of a nature in respect of which the Secretary of State has, in respect of all members and in respect of the relevant membership year, determined is not to be eligible for payment under the scheme<sup>25</sup>.

1 As to the meaning of 'membership year' see PARA 690 note 6.

- 2 As to the meaning of 'qualifying expense' see PARA 688.
- 3 As to the Property Expenses Scheme see PARA 686.
- 4 As to the Secretary of State see PARA 6 note 8.
- 5 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(1)(a). 'Member' includes an eligible body whose participation in the scheme has been terminated and in respect of whom the conditions specified in reg 9(2)(c)(iii) and (iv) (see the text to notes 19-21) are satisfied: reg 9(3)(b). As to the meaning of 'member' generally see PARA 688 note 2. As to the meaning of 'eligible body' see PARA 687 note 1.
- 6 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(1)(b).
- 7 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(1).
- 8 Ie under the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 7(1): see PARA 690.
- 9 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(a).
- 10 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(b) (reg 9(2)(b) amended by SI 2000/2342).
- 11 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(b)(i) (as amended: see note 10).
- 12 'Qualifying date' means the date falling 14 days after that on which the member became aware that a qualifying expense had arisen, or after that on which, in the opinion of the Secretary of State, the member ought to have become aware of that fact, whichever is the later: National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(3)(c).
- 13 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(b)(ii) (as amended: see note 10).
- 14 Ie under the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(1): see the text to notes 1-7.
- 15 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(b)(iii) (as amended: see note 10).
- 16 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(b)(iv) (as amended: see note 10).

- 17 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(c)(i).
- 18 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(c)(ii).
- 19 lie under the National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(1): see the text to notes 1-7.
- 20 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(c)(iii).
- 21 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(c)(iv).
- 22 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(d)(i).
- 23 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(d)(ii).
- 24 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(d)(iii).
- 25 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 9(2)(e).

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### **693. Provision of information.**

A member<sup>1</sup> of the Property Expenses Scheme<sup>2</sup> must, at such times and in such manner as the Secretary of State<sup>3</sup> may require, furnish to the Secretary of State such information as he may request, about: (1) the nature of any relevant function<sup>4</sup> being carried on, or to be carried on, by the member in any membership year<sup>5</sup> which the Secretary of State may specify<sup>6</sup>; (2) the number of employees of the member who are engaged in its performance of any relevant function, or such part of any relevant function as the Secretary of State may specify, and the qualifications and experience of those employees<sup>7</sup>; and (3) any event of which the member is aware which it considers might give rise to a qualifying expense<sup>8</sup>.

1 As to the meaning of 'member' see PARA 688 note 2.

2 As to the Property Expenses Scheme see PARA 686.

3 As to the Secretary of State see PARA 6 note 8.

4 As to the meaning of 'relevant function' see PARA 688 note 7.

5 As to the meaning of 'membership year' see PARA 690 note 6.

6 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 10(a).

7 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 10(b).

8 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 10(c). As to the meaning of 'qualifying expense' see PARA 688.

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**694. Availability of directions and guidance.**

The Secretary of State<sup>1</sup> must make available to eligible bodies<sup>2</sup>, in such form and at such times as he may consider appropriate: (1) any directions he may give, to any body directed<sup>3</sup> to carry out functions<sup>4</sup> in connection with the administration of the Property Expenses Scheme<sup>5</sup>, with respect to the discharge by that body of those functions<sup>6</sup>; (2) any guidance he may give to that body as to the manner in which the scheme is to be administered<sup>7</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'eligible body' see PARA 687 note 1.

3 Ie under the National Health Service Act 2006 s 71(6): see PARA 656.

4 As to the meaning of 'functions' see PARA 6 note 3.

5 As to the Property Expenses Scheme see PARA 686. As to the administration of the scheme see PARA 686 note 5.

6 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 11(a); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

7 National Health Service (Property Expenses Scheme) Regulations 1999, SI 1999/874, reg 11(b).

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## **(ii) Redress Scheme**

### **A. ENGLAND**

#### **695. Power to establish redress scheme.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Secretary of State may by regulations<sup>2</sup> establish a scheme<sup>3</sup> for the purpose of enabling redress to be provided without the recourse to civil proceedings in circumstances<sup>4</sup> where under the law of England and Wales<sup>5</sup> qualifying liability in tort on the part of a specified body or other person<sup>6</sup> arises in connection with the provision, as part of the health service<sup>7</sup> in England, of qualifying services<sup>8</sup>.

'Qualifying liability in tort' is liability in tort owed: (1) in respect of or consequent upon personal injury<sup>9</sup> or loss arising out of or in connection with breach of the duty of care owed to any person in connection with the diagnosis of illness<sup>10</sup>, or the care or treatment of any patient<sup>11</sup>; and (2) in consequence of any act or omission by a health care professional<sup>12</sup>.

Services are 'qualifying services' if: (a) they are provided in a hospital<sup>13</sup> (in England or elsewhere)<sup>14</sup>; or (b) they are of such other description (including a description involving provision outside England) as the Secretary of State may specify by regulations<sup>15</sup>. Such regulations may not specify services of any of the following descriptions: (i) primary dental services<sup>16</sup>; (ii) primary medical services<sup>17</sup>; (iii) general ophthalmic services<sup>18</sup>; (iv) pharmaceutical services<sup>19</sup>; and (v) services of a kind which may be provided under local pharmaceutical services schemes<sup>20</sup> or local pharmaceutical services pilot schemes<sup>21</sup>.

1 The NHS Redress Act 2006 s 1 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the making of regulations see PARA 709.

3 'Scheme', except in the NHS Redress Act 2006 s 1, means a scheme established under that section: s 18(1).

4 NHS Redress Act 2006 s 1(1).

5 As to the meanings of 'England' and 'Wales' see para 6 note 2.

6 The specified bodies and other persons are: (1) the Secretary of State (NHS Redress Act 2006 s 1(3)(a)); (2) a primary care trust (s 1(3)(b)); (3) a designated strategic health authority (s 1(3)(c)); and (4) a body or other person providing, or arranging for the provision of, services whose provision is the subject of arrangements with a body or other person mentioned in head (1), (2) or (3) above (s 1(3)(d)). In head (4) above, the reference to a

person providing services does not include a person providing services under a contract of employment: s 1(9). As to primary care trusts see para 111. 'Designated strategic health authority' means a strategic health authority designated for the purposes of the NHS Redress Act 2006 by regulations made by the Secretary of State: s 18(1). As to strategic health authorities see para 94 et seq. As to the meaning of 'person' see para 17 note 2.

7 As to the meaning of 'health service' see para 10 note 3: definition applied by the NHS Redress Act 2006 s 18(1) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 307, 312).

8 NHS Redress Act 2006 s 1(2). As to the application of a scheme see para 696.

9 'Personal injury' includes any disease and any impairment of a person's physical or mental health: NHS Redress Act 2006 s 18(1).

10 As to the meaning of 'illness' see para 10 note 5: definition applied by the NHS Redress Act 2006 s 18(1) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 307, 312).

11 NHS Redress Act 2006 s 1(4)(a). As to the meaning of 'patient' see para 15 note 6: definition applied by the NHS Redress Act 2006 s 18(1) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 307, 312).

12 NHS Redress Act 2006 s 1(4)(b). The reference to a 'health care professional' is to a member of a profession (whether or not regulated by, or by virtue of, any enactment) which is concerned (wholly or partly) with the physical or mental health of individuals: s 1(10). As to the meaning of 'enactment' see PARA 10 note 7. As to the liability in tort of medical practitioners and health service bodies see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 196-205.

13 As to the meaning of 'hospital' see PARA 12 note 4: definition applied by the NHS Redress Act 2006 s 1(11) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 307, 310).

14 NHS Redress Act 2006 s 1(5)(a).

15 NHS Redress Act 2006 s 1(5)(b). Such regulations may, in particular, describe services by reference to the manner or circumstances in which they are provided: s 1(8).

16 NHS Redress Act 2006 s 1(6)(a). The references in s1(6) to 'primary dental services' and 'primary medical services' are to primary dental services and primary medical services under the National Health Service Act 2006, except that the Secretary of State may by regulations provide that services of a description specified in the regulations are not to be regarded as primary dental services or primary medical services for these purposes: NHS Redress Act 2006 s 1(7) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 307, 309). Such regulations may, in particular, describe services by reference to the manner or circumstances in which they are provided: NHS Redress Act 2006 s 1(8). As to primary dental services see PARA 277. As to primary medical services see PARA 241.

17 NHS Redress Act 2006 s 1(6)(b). See also note 16.

18 NHS Redress Act 2006 s 1(6)(c). General ophthalmic services are services provided under the National Health Service Act 1977 s 38 (see PARA 295): NHS Redress Act 2006 s 1(6)(c).

19 NHS Redress Act 2006 s 1(6)(d). Pharmaceutical services are services provided under the National Health Service Act 2006 s 126 (see PARA 339) or by virtue of s 127 (see PARA 346): see NHS Redress Act 2006 s 1(6)(d) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 307, 308(a)).

20 The services of a kind which may be provided under the National Health Service Act 2006 s 126 (see PARA 339) or by virtue of s 127 (see PARA 346), or which are provided under Sch 12 (see PARAS 431-432): NHS Redress Act 2006 s 1(6)(e) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 307, 308(b)).

21 NHS Redress Act 2006 s 1(6)(e) (as amended: see note 20). Services of a kind which may be provided under local pharmaceutical services pilot schemes are those which may be provided under the National Health Service Act 2006 s 134 (see PARA 419): NHS Redress Act 2006 s 1(6)(e) (as so amended).



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**696. Application of scheme.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A scheme<sup>2</sup> may make such a provision defining its application as the Secretary of State thinks fit<sup>3</sup>; but a scheme must provide that it does not apply in relation to a liability that is or has been the subject of civil proceedings<sup>4</sup>.

1 The NHS Redress Act 2006 s 2 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3.

3 NHS Redress Act 2006 s 2(1).

4 NHS Redress Act 2006 s 2(2).

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### **697. Redress under scheme.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A scheme<sup>2</sup> may make such provision as the Secretary of State thinks fit about redress under the scheme<sup>3</sup>. A scheme must provide for redress ordinarily to comprise:

- 480 (1) the making of an offer of compensation in satisfaction of any right to bring civil proceedings in respect of the liability concerned<sup>4</sup>;
- 481 (2) the giving of an explanation<sup>5</sup>;
- 482 (3) the giving of an apology<sup>6</sup>; and
- 483 (4) the giving of a report on the action which has been, or will be, taken to prevent similar cases arising<sup>7</sup>;

but may specify circumstances in which one or more of those forms of redress is not required<sup>8</sup>. A scheme may, in particular: (a) make provision for the compensation that may be offered to take the form of entry into a contract to provide care or treatment or of financial treatment, or both<sup>9</sup>; (b) make provision about the circumstances in which different forms of compensation may be offered<sup>10</sup>.

A scheme that provides for financial compensation to be offered may, in particular: (i) make provision about the matters in respect of which financial compensation may be offered<sup>11</sup>; (ii) make provision with respect to the assessment of the amount of any financial compensation<sup>12</sup>. A scheme that provides for financial compensation to be offered: (A) may specify an upper limit on the amount of financial compensation that may be included in an offer under the scheme<sup>13</sup>; (B) if it does not specify such a limit, must specify an upper limit on the amount of financial compensation that may be included in such an offer in respect of pain and suffering<sup>14</sup>; (C) may not specify any other limit on what may be included in such an offer by way of financial compensation<sup>15</sup>.

1 The NHS Redress Act 2006 s 3 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

3 NHS Redress Act 2006 s 3(1). This provision is expressed to be subject to s 3(2) (see the text to notes 4-8) and s 3(5) (see the text to notes 13-15).

4 NHS Redress Act 2006 s 3(2)(a).

5 NHS Redress Act 2006 s 3(2)(b).

- 6 NHS Redress Act 2006 s 3(2)(c).
- 7 NHS Redress Act 2006 s 3(2)(d).
- 8 NHS Redress Act 2006 s 3(2).
- 9 NHS Redress Act 2006 s 3(3)(a).
- 10 NHS Redress Act 2006 s 3(3)(b).
- 11 NHS Redress Act 2006 s 3(4)(a).
- 12 NHS Redress Act 2006 s 3(4)(b).
- 13 NHS Redress Act 2006 s 3(5)(a).
- 14 NHS Redress Act 2006 s 3(5)(b).
- 15 NHS Redress Act 2006 s 3(5)(c).

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## **698. Commencement of proceedings under scheme.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A scheme<sup>2</sup> may make such provision as the Secretary of State thinks fit about the commencement of proceedings under the scheme<sup>3</sup>. A scheme may, in particular, make provision: (1) about who may commence proceedings under the scheme<sup>4</sup>; (2) about how proceedings under the scheme may be commenced<sup>5</sup>; (3) for time limits in relation to the commencement of proceedings under the scheme<sup>6</sup>; (4) about circumstances in which proceedings under the scheme may not be commenced<sup>7</sup>; (5) requiring proceedings under the scheme to be commenced in specified circumstances<sup>8</sup>; (6) for notification of the commencement of proceedings under the scheme in specified circumstances<sup>9</sup>.

1 The NHS Redress Act 2006 s 4 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

3 NHS Redress Act 2006 s 4(1).

4 NHS Redress Act 2006 s 4(2)(a).

5 NHS Redress Act 2006 s 4(2)(b).

6 NHS Redress Act 2006 s 4(2)(c).

7 NHS Redress Act 2006 s 4(2)(d).

8 NHS Redress Act 2006 s 4(2)(e). 'Specified', in relation to a scheme, means specified in the scheme: s 18(1).

9 NHS Redress Act 2006 s 4(2)(f).

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### **699. Duty to consider potential application of scheme.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Secretary of State may by regulations<sup>2</sup> make provision requiring any specified body or other person<sup>3</sup>: (1) to consider, in such circumstances as the regulations may provide, whether a case that the body or other person is investigating or reviewing involves liability to which a scheme<sup>4</sup> applies<sup>5</sup>; and (2) if it appears that it does, to take such steps as the regulations may provide<sup>6</sup>. The specified bodies and other persons are: (a) any body or other person to whose liability a scheme applies<sup>7</sup>; and (b) the Commission for Healthcare Audit and Inspection<sup>8</sup>.

1 The NHS Redress Act 2006 s 5 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the making of regulations see PARA 709.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

5 NHS Redress Act 2006 s 5(1)(a).

6 NHS Redress Act 2006 s 5(1)(b).

7 NHS Redress Act 2006 s 5(2)(a).

8 NHS Redress Act 2006 s 5(2)(b). As to the Commission for Healthcare Audit and Inspection see PARA 552.

### **UPDATE**

### **699 Duty to consider potential application of scheme**

TEXT AND NOTE 8--Now head (b) the Care Quality Commission: NHS Redress Act 2006 s 5(2)(b) (amended by the Health and Social Care Act 2008 Sch 5 para 89).

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## **700. Proceedings under scheme.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A scheme<sup>2</sup> may make such provision as the Secretary of State thinks fit about proceedings under the scheme<sup>3</sup>. A scheme may, in particular, make provision: (1) about the investigation of cases under the scheme (including provision for the overseeing of the investigation by an individual of a specified<sup>4</sup> description)<sup>5</sup>; (2) about the making of decisions about the application of the scheme<sup>6</sup>; (3) for time limits in relation to acceptance of an offer of compensation under the scheme<sup>7</sup>; (4) about the form and content of settlement agreements under the scheme<sup>8</sup>; (5) for settlement agreements under the scheme to be subject in cases of a specified description to approval by a court<sup>9</sup>; (6) about the termination of proceedings under the scheme<sup>10</sup>.

A scheme must: (a) make provision for the findings of an investigation of a case under the scheme to be recorded in a report<sup>11</sup>; and (b) make provision for a copy of the report to be provided on request to the individual seeking redress<sup>12</sup>. A scheme must provide for a settlement agreement under the scheme to include a waiver of the right to bring civil proceedings in respect of the liability to which the settlement relates<sup>13</sup>; and a scheme must provide for the termination of proceedings under the scheme if the liability to which the proceedings relate becomes the subject of civil proceedings<sup>14</sup>.

1 The NHS Redress Act 2006 s 6 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

3 NHS Redress Act 2006 s 6(1). This provision is expressed to be subject to s 6(3)-(6): see the text to notes 11-14.

4 As to the meaning of 'specified' see PARA 698 note 8.

5 NHS Redress Act 2006 s 6(2)(a).

6 NHS Redress Act 2006 s 6(2)(b).

7 NHS Redress Act 2006 s 6(2)(c).

8 NHS Redress Act 2006 s 6(2)(d).

- 9 NHS Redress Act 2006 s 6(2)(e).
- 10 NHS Redress Act 2006 s 6(2)(f).
- 11 NHS Redress Act 2006 s 6(3)(a).
- 12 NHS Redress Act 2006 s 6(3)(b). A scheme may provide that no copy of an investigation report need be provided before an offer is made under the scheme or proceedings under the scheme are terminated (s 6(4)(a)); or in such other circumstances as may be specified (s 6(4)(b)).
- 13 NHS Redress Act 2006 s 6(5).
- 14 NHS Redress Act 2006 s 6(6).

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## **701. Suspension of limitation period.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A scheme<sup>2</sup> must make provision for the period during which a liability is the subject of proceedings under the scheme to be disregarded for the purposes of calculating whether any relevant limitation period<sup>3</sup> has expired<sup>4</sup>. A scheme may define for the purposes of such provision when liability is the subject of proceedings under the scheme<sup>5</sup>.

1 The NHS Redress Act 2006 s 7 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

3 The reference to 'any relevant limitation period' is to any period of time for the bringing of civil proceedings in respect of the liability which is prescribed by or under the Limitation Act 1980 (see **LIMITATION PERIODS**) or any other enactment: NHS Redress Act 2006 s 7(2). As to the meaning of 'enactment' see PARA 10 note 7.

4 NHS Redress Act 2006 s 7(1).

5 NHS Redress Act 2006 s 7(3).



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## **702. Advice and assistance.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A scheme<sup>2</sup> may make such provision as the Secretary of State thinks fit<sup>3</sup>: (1) for the provision of legal advice without charge to individuals seeking redress under the scheme<sup>4</sup>; (2) for the provision in connection with proceedings under the scheme of other services, including the services of medical experts<sup>5</sup>. A scheme must make such provision as the Secretary of State considers appropriate in order to secure that individuals to whom an offer under the scheme is made have access to legal advice without charge in relation to the offer<sup>6</sup>, and any settlement agreement<sup>7</sup>.

Provision<sup>8</sup> about who may provide the legal advice may operate by reference to whether a potential provider is included in a list prepared by a specified<sup>9</sup> person<sup>10</sup>. A scheme that makes provision for the provision of the services of medical experts must provide for such experts to be instructed jointly by the scheme authority<sup>11</sup> and the individual seeking redress under the scheme<sup>12</sup>.

It is the duty of the Secretary of State to arrange, to such extent as he considers necessary to meet all reasonable requirements, for the provision of assistance (by way of representation or otherwise) to individuals seeking, or intending to seek, redress under a scheme<sup>13</sup>. The Secretary of State may make such other arrangements as he thinks fit for the provision of assistance to individuals in connection with cases which are the subject of proceedings under a scheme<sup>14</sup>. In making such arrangements<sup>15</sup>, the Secretary of State must have regard to the principle that the provision of services under the arrangements in connection with a particular case should, so far as practicable, be independent of any person to whose conduct the case relates or who is involved in dealing with the case<sup>16</sup>. The Secretary of State may make payments to any person in pursuance of such arrangements<sup>17</sup>.

1 The NHS Redress Act 2006 ss 8, 9 come into force on such day or days as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day or days had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

3 NHS Redress Act 2006 s 8(1). This provision is expressed to be subject to s 8(2) (see the text to notes 6-7) and 8(4) (see the text to notes 11-12).

4 NHS Redress Act 2006 s 8(1)(a).

5 NHS Redress Act 2006 s 8(1)(b).

6 NHS Redress Act 2006 s 8(2)(a).

7 NHS Redress Act 2006 s 8(2)(b).

8 Ie under the NHS Redress Act 2006 s 8(1)(a) (see the text to note 4) or 8(2) (see the text to notes 6-7).

9 As to the meaning of 'specified' see PARA 698 note 8.

10 NHS Redress Act 2006 s 8(3). As to the meaning of 'person' see PARA 17 note 2.

11 As to the meaning of 'scheme authority' see PARA 704.

12 NHS Redress Act 2006 s 8(4).

13 NHS Redress Act 2006 s 9(1).

14 NHS Redress Act 2006 s 9(2).

15 Ie arrangements under the NHS Redress Act 2006 s 9.

16 NHS Redress Act 2006 s 9(4).

17 NHS Redress Act 2006 s 9(3).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(11) LIABILITY AND REDRESS SCHEMES/(ii) Redress Scheme/A. ENGLAND/703. Scheme members.

### **703. Scheme members.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A scheme<sup>2</sup> may make such provision<sup>3</sup> as the Secretary of State thinks fit<sup>4</sup>: (1) about membership of the scheme on the part of any body or other person<sup>5</sup> to whose liability the scheme applies<sup>6</sup>; and (2) about the functions of members in connection with the scheme<sup>7</sup>.

A scheme may, in particular: (a) require or permit a specified<sup>8</sup> body or other person to be a member of the scheme<sup>9</sup>; (b) require a member of the scheme to carry out specified functions in relation to specified proceedings under the scheme<sup>10</sup>; (c) authorise members of the scheme to make arrangements under which functions under the scheme are carried out by one member on behalf of another<sup>11</sup>; (d) require members of the scheme to have regard, in relation to the carrying out of functions under the scheme, to any relevant advice or other guidance issued by the scheme authority<sup>12</sup>; (e) require, or enable the scheme authority to require, members of the scheme to keep specified records in relation to the carrying out of functions under the scheme<sup>13</sup>; (f) require, or enable the scheme authority to require, members of the scheme to provide the authority with information or documents relevant to its functions<sup>14</sup>; (g) require members of the scheme to make payments in accordance with the scheme by way of contribution to specified costs of its operation<sup>15</sup>; (h) require a member of the scheme to charge an individual of a specified description with responsibility for overseeing the carrying out of specified functions conferred<sup>16</sup> on the member<sup>17</sup>; (i) require a member of the scheme to charge an individual of a specified description with responsibility for advising the member about lessons to be learnt from cases involving the member that are dealt with under the scheme<sup>18</sup>.

A scheme must require a member of the scheme to prepare and publish an annual report about cases involving the member that are dealt with under the scheme and the lessons to be learnt from them<sup>19</sup>.

1 The NHS Redress Act 2006 s 10 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

3 The provision that may be made under the NHS Redress Act 2006 s 10 includes provision which has the effect that a member of a scheme who has arranged for the provision of services has functions under the scheme which relate to someone else's liability in connection with the provision of the services: s 10(4).

4 NHS Redress Act 2006 s 10(1). This provision is expressed to be subject to s 10(3): see the text to note 19.

5 As to the meaning of 'person' see PARA 17 note 2.

6 NHS Redress Act 2006 s 10(1)(a).

7 NHS Redress Act 2006 s 10(1)(b). References to 'functions' in connection with a scheme include functions in relation to settlement agreements under the scheme: s 18(2).

8 As to the meaning of 'specified' see PARA 698 note 8.

9 NHS Redress Act 2006 s 10(2)(a).

10 NHS Redress Act 2006 s 10(2)(b).

11 NHS Redress Act 2006 s 10(2)(c).

12 NHS Redress Act 2006 s 10(2)(d). As to the meaning of 'scheme authority' see PARA 704.

13 NHS Redress Act 2006 s 10(2)(e).

14 NHS Redress Act 2006 s 10(2)(f).

15 NHS Redress Act 2006 s 10(2)(g).

16 Ie under the NHS Redress Act 2006.

17 NHS Redress Act 2006 s 10(2)(h).

18 NHS Redress Act 2006 s 10(2)(i).

19 NHS Redress Act 2006 s 10(3).

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#### **704. Scheme authority.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A scheme<sup>2</sup> must make provision for a specified<sup>3</sup> special health authority<sup>4</sup> (known as the 'scheme authority') to have such functions<sup>5</sup> in connection with the scheme as the Secretary of State thinks fit<sup>6</sup>.

A scheme may, in particular, provide for the scheme authority to have functions in relation to: (1) proceedings under the scheme<sup>7</sup>; (2) payments under settlement agreements under the scheme<sup>8</sup>; (3) the provision in connection with the scheme of advice or other guidance about specified matters<sup>9</sup>; (4) the provision in connection with the scheme of legal advice without charge<sup>10</sup>; (5) the assessment and payment of contributions by members of the scheme<sup>11</sup>; (6) the monitoring of the carrying out by members of the scheme of their functions under it<sup>12</sup>; (7) the provision to the Independent Regulator of Foundation Trusts<sup>13</sup> of reports with respect to failure by NHS foundation trusts<sup>14</sup> to carry out functions under the scheme<sup>15</sup>; (8) the publication of annual data about the scheme<sup>16</sup>.

1 The NHS Redress Act 2006 s 11 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

3 As to the meaning of 'specified' see PARA 698 note 8.

4 As to the special health authorities see PARA 136.

5 As to the meaning of 'functions' see PARA 703 note 7.

6 NHS Redress Act 2006 s 11(1). The National Health Service Act 2006 s 28(1) and the National Health Service (Wales) Act 2006 s 22(1) (power to establish special bodies for the purpose of exercising any functions which may be conferred on them by or under those Acts) (see PARA 136) have effect as if the provisions of the NHS Redress Act 2006 were contained in those Acts: s 11(3) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 307, 311).

7 NHS Redress Act 2006 s 11(2)(a).

8 NHS Redress Act 2006 s 11(2)(b).

9 NHS Redress Act 2006 s 11(2)(c).

- 10 NHS Redress Act 2006 s 11(2)(d).
- 11 NHS Redress Act 2006 s 11(2)(e).
- 12 NHS Redress Act 2006 s 11(2)(f).
- 13 As to the Independent Regulator of NHS Foundation Trusts see para 188.
- 14 As to NHS foundation trusts see PARA 174.
- 15 NHS Redress Act 2006 s 11(2)(g).
- 16 NHS Redress Act 2006 s 11(2)(h).

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# **705. General duty to promote resolution under scheme.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

A scheme<sup>2</sup> must include provision requiring the scheme authority<sup>3</sup> and the members of the scheme, in carrying out their functions<sup>4</sup> under the scheme, to have regard in particular to the desirability of redress being provided without recourse to civil proceedings<sup>5</sup>.

1 The NHS Redress Act 2006 s 12 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

3 As to the meaning of 'scheme authority' see PARA 704.

4 As to the meaning of 'functions' see PARA 703 note 7.

5 NHS Redress Act 2006 s 12.

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## **706. Duties of co-operation.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The scheme authority<sup>2</sup> under a scheme<sup>3</sup> and the Commission for Healthcare Audit and Inspection<sup>4</sup> must co-operate with each other where it appears to them that it is appropriate to do so for the efficient and effective discharge of their respective functions<sup>5</sup>. The scheme authority under a scheme and the National Patient Safety Agency<sup>6</sup> must co-operate with each other where it appears to them that it is appropriate to do so for the efficient and effective discharge of their respective functions<sup>7</sup>.

1 The NHS Redress Act 2006 s 13 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme authority' see PARA 704.

3 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

4 As to the Commission for Healthcare Audit and Inspection see PARA 552.

5 NHS Redress Act 2006 s 13(1).

6 As to the National Patient Safety Agency see PARA 150.

7 NHS Redress Act 2006 s 13(2).

### **UPDATE**

## **706 Duties of co-operation**

TEXT AND NOTE 4--For 'the Commission for Healthcare Audit and Inspection' read 'the Care Quality Commission': NHS Redress Act 2006 s 13(1) (amended by the Health and Social Care Act 2008 Sch 5 para 90).



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(11) LIABILITY AND REDRESS SCHEMES/(ii) Redress Scheme/A. ENGLAND/707. Complaints.

## **707. Complaints.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Secretary of State may by regulations<sup>2</sup> make provision about the handling and consideration of complaints made under the regulations about maladministration by any body or other person<sup>3</sup>: (1) in the exercise of functions<sup>4</sup> under a scheme<sup>5</sup>; (2) in the exercise of other functions relating to proceedings under a scheme<sup>6</sup>; or (3) in connection with a settlement agreement entered into under a scheme<sup>7</sup>. Such regulations must provide for complaints to be considered by the scheme authority<sup>8</sup>, or a member of the scheme<sup>9</sup>.

The regulations may make provision about<sup>10</sup>: (a) the person who may make a complaint<sup>11</sup>; (b) the complaints which may, or may not, be made under the regulations<sup>12</sup>; (c) the persons to whom complaints may be made<sup>13</sup>; (d) complaints which need not be considered<sup>14</sup>; (e) the period within which complaints must be made<sup>15</sup>; (f) the procedures to be followed in making, handling and considering a complaint<sup>16</sup>; (g) matters which are excluded from consideration<sup>17</sup>; (h) the making of a report or recommendations about a complaint<sup>18</sup>; (i) the action to be taken as a result of a complaint<sup>19</sup>. The regulations may impose on the scheme authority, or a member of the scheme, obligations with respect to producing, or making available to the public, information about the procedures to be followed under the regulations<sup>20</sup>. The regulations may also<sup>21</sup>: (i) provide for different parts or aspects of a complaint to be treated differently<sup>22</sup>; (ii) require the production of information or documents in order to enable a complaint to be properly considered<sup>23</sup>; (iii) authorise the disclosure of information or documents relevant to a complaint to a person who is considering a complaint under the regulations, notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure<sup>24</sup>.

The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures<sup>25</sup>, including in particular provision for enabling such a complaint to be made under the regulations<sup>26</sup>. The regulations may, in relation to complaints in connection with a scheme which are made or purport to be made under the regulations, make provision for securing<sup>27</sup>: (A) that any matters raised in such complaints which fall to be considered under other statutory complaints procedures are referred to the body or other person operating the appropriate procedures<sup>28</sup>; (B) that any such matters are treated as if they had been raised in a complaint made under the appropriate procedures<sup>29</sup>.

1 The NHS Redress Act 2006 s 14 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the making of regulations see PARA 709.

3 As to the meaning of 'person' see PARA 17 note 2.

4 As to the meaning of 'functions' see PARA 703 note 7.

5 NHS Redress Act 2006 s 14(1)(a). As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

6 NHS Redress Act 2006 s 14(1)(b).

7 NHS Redress Act 2006 s 14(1)(c).

8 NHS Redress Act 2006 s 14(2)(a). As to the meaning of 'scheme authority' see PARA 704.

9 NHS Redress Act 2006 s 14(2)(b).

10 The provisions of the NHS Redress Act 2006 s 14(4)-(8) (see the text to notes 11-29) are without prejudice to the generality of s 14(1) (see the text to notes 1-7): see s 14(3).

11 NHS Redress Act 2006 s 14(4)(a).

12 NHS Redress Act 2006 s 14(4)(b).

13 NHS Redress Act 2006 s 14(4)(c).

14 NHS Redress Act 2006 s 14(4)(d).

15 NHS Redress Act 2006 s 14(4)(e).

16 NHS Redress Act 2006 s 14(4)(f).

17 NHS Redress Act 2006 s 14(4)(g).

18 NHS Redress Act 2006 s 14(4)(h).

19 NHS Redress Act 2006 s 14(4)(i).

20 NHS Redress Act 2006 s 14(5). See also note 10.

21 NHS Redress Act 2006 s 14(6). See also note 10.

22 NHS Redress Act 2006 s 14(6)(a).

23 NHS Redress Act 2006 s 14(6)(b).

24 NHS Redress Act 2006 s 14(6)(c).

25 In the NHS Redress Act 2006 s 14(7) and (8) (see the text to notes 28-29), 'statutory complaints procedures' means complaints procedures established by or under any enactment: s 14(9). As to the meaning of 'enactment' see [PARA 10](#) note 7.

26 NHS Redress Act 2006 s 14(7). See also note 10.

27 NHS Redress Act 2006 s 14(8). See also note 10.

28 NHS Redress Act 2006 s 14(8)(a).

29 NHS Redress Act 2006 s 14(8)(b).

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# **708. Remit of Health Service Commissioner for England.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The Health Service Commissioner for England<sup>2</sup> has powers to investigate complaints made to him by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by any person or body in the exercise of any functions under a scheme<sup>3</sup>, in connection with a settlement agreement entered into under such a scheme, or in the exercise of any functions under regulations<sup>4</sup> relating to complaints about maladministration in connection with a scheme<sup>5</sup>.

1 The Health Service Commissioners Act 1993 s 3(1F) comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: see the NHS Redress Act 2006 ss 15, 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the Health Service Commissioner for England see PARA 641.

3 Ie a scheme established under the NHS Redress Act 2006 s 1: see PARA 695.

4 Ie regulations made under the NHS Redress Act 2006 s 14: see PARA 707.

5 See the Health Service Commissioners Act 1993 s 3; and PARA 644.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(11) LIABILITY AND REDRESS SCHEMES/(ii) Redress Scheme/A. ENGLAND/709. Regulations.

## **709. Regulations.**

As from a day to be appointed the following provisions have effect<sup>1</sup>.

The provisions of the NHS Redress Act 2006 about what a scheme<sup>2</sup> may do are without prejudice to the generality of the power of the Secretary of State<sup>3</sup> by regulations to establish a scheme<sup>4</sup>.

Any power of the Secretary of State to make regulations under the Act includes: (1) power to make provision conferring or imposing functions<sup>5</sup> which involve the exercise of a discretion<sup>6</sup>; (2) power to make different provision for different cases<sup>7</sup>; and (3) power to make incidental, supplementary, consequential or transitional provision or savings<sup>8</sup>. Any such power of the Secretary of State to make regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case<sup>9</sup>.

Any such power of the Secretary of State to make regulations is exercisable by statutory instrument<sup>10</sup>. No regulations establishing a scheme may be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament<sup>11</sup>. A statutory instrument that contains regulations made by the Secretary of State<sup>12</sup>, and is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament<sup>13</sup>, is subject to annulment in pursuance of a resolution of either House of Parliament<sup>14</sup>.

1 The NHS Redress Act 2006 s 16 comes into force on such day as the Secretary of State may appoint by order made by statutory instrument: s 19(4). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 6 note 8.

2 As to the meaning of 'scheme' see PARA 695 note 3. As to the application of a scheme see PARA 696.

3 Ie the power under the NHS Redress Act 2006 s 1(1): see PARA 695.

4 NHS Redress Act 2006 s 16(1).

5 As to the meaning of 'functions' see PARA 703 note 7.

6 NHS Redress Act 2006 s 16(2)(a).

7 NHS Redress Act 2006 s 16(2)(b).

8 NHS Redress Act 2006 s 16(2)(c). The power to make consequential amendments includes power to make provision amending or revoking any instrument made under an enactment: s 16(3). As to the meaning of 'enactment' see PARA 10 note 7.

9 NHS Redress Act 2006 s 16(4).

10 NHS Redress Act 2006 s 16(5). As to statutory instruments generally see **STATUTES** vol 44(1) (Reissue) PARA 1501 et seq.

11 NHS Redress Act 2006 s 16(6). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

12 NHS Redress Act 2006 s 16(7)(a).

13 NHS Redress Act 2006 s 16(7)(b).

14 NHS Redress Act 2006 s 16(7).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(11) LIABILITY AND REDRESS SCHEMES/(ii) Redress Scheme/B. WALES/710. Power to establish scheme.

## **B. WALES**

### **710. Power to establish scheme.**

The National Assembly for Wales may make provision by way of an Assembly measure<sup>1</sup> for and in connection with the provision of redress without recourse to civil proceedings in circumstances in which, under the law of England and Wales, qualifying liability in tort<sup>2</sup> arises in connection with the provision of services (in Wales or elsewhere) as part of the health service in Wales<sup>3</sup>.

<sup>1</sup> As to the National Assembly for Wales and as to Assembly measures see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

<sup>2</sup> 'Qualifying liability in tort' means liability in tort owed in respect of or consequent upon personal injury or loss arising out of or in connection with breach of a duty of care owed to any person in connection with the diagnosis of illness or the care or treatment of any patient: Government of Wales Act 2006 Sch 5 Field 9 Matter 9.1 (added by SI 2007/910). 'Personal injury' includes any disease and any impairment of a person's physical or mental health: Government of Wales Act 2006 Sch 5 Field 9 Matter 9.1 (as so added). 'Illness' includes mental disorder within the meaning of the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402) and any injury or disability requiring medical or dental treatment or nursing: National Health Service (Wales) Act 2006 s 206(1); definition applied by the Government of Wales Act 2006 Sch 5 Field 9 Matter 9.1 (as so added). As from a day to be appointed this definition is amended to read: 'illness' includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment or nursing: National Health Service (Wales) Act 2006 s 206(1) (definition prospectively amended by the Mental Health Act 2007 s 1(4), Sch 1 Pt 2 para 25). At the date at which this volume states the law no such day had been appointed. 'Medical' includes surgical: National Health Service (Wales) Act 2006 s 206(1); definition applied by the Government of Wales Act 2006 Sch 5 Field 9 Matter 9.1 (as so added). 'Patient' includes a woman who is pregnant or breast-feeding or who has recently given birth: National Health Service (Wales) Act 2006 s 206(1); definition as so applied.

<sup>3</sup> See the Government of Wales Act 2006 ss 93, 94, Sch 5 Field 9 Matter 9.1 (as added: see note 3). 'The health service in Wales' means the health service continued under the National Health Service (Wales) Act 2006 s 1(1) (see PARA 74): Government of Wales Act 2006 Sch 5 Field 9 Matter 9.1 (as so added). As to the meaning of 'Wales' see PARA 6 note 2. As to the measure made see the NHS Redress (Wales) Measure 2007.

## **UPDATE**

### **710 Power to establish scheme**

NOTE 3--NHS Redress (Wales) Measure 2007 should read NHS Redress (Wales) Measure 2008.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/(i) In general/711. Benefits for persons engaged in health services.

## **(12) SUPERANNUATION AND OTHER BENEFITS**

### **(i) In general**

#### **711. Benefits for persons engaged in health services.**

The Secretary of State<sup>1</sup> may, by regulations made with the consent of the Treasury<sup>2</sup>, and after consulting representatives of persons<sup>3</sup> likely to be affected<sup>4</sup>, make provision with respect to the pensions, allowances or gratuities which, subject to prescribed requirements and conditions, are or are to be paid by him to or in respect of prescribed persons or classes of persons (known as the 'health staff')<sup>5</sup>. The persons and classes which may be so prescribed are: (1) persons or classes engaged in health services other than services provided by a local authority<sup>6</sup>; and (2) other persons or classes for whom it is appropriate, in the Secretary of State's opinion, to provide the benefits referred to above<sup>7</sup>. Such regulations may include provisions set out by statute<sup>8</sup>, and may make different provisions for different classes of persons or for different circumstances<sup>9</sup>.

There are currently two National Health Service pension schemes created under these provisions. The 1995 scheme<sup>10</sup> was closed to new entrants on 31 March 2008 but continues to have effect for all persons who were members of the scheme before 1 April 2008. The 2008 scheme<sup>11</sup> was introduced on 1 April 2008 and applies to persons employed in the National Health Service on or after that date, or in such employment immediately before that date but not in the 1995 scheme and wishing to join the new scheme. There is also a scheme for the payment of injury benefits to or in respect of any person engaged in the National Health Service whose earning ability is reduced or who dies as a result of an injury suffered or a disease contracted in the course of his or her duties<sup>12</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 This function is exercised by the Treasury by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 As to the meaning of 'person' see PARA 17 note 2.

4 See the Superannuation Act 1972 s 10(4).

5 Superannuation Act 1972 s 10(1) (amended by the Pensions (Miscellaneous Provisions) Act 1990 s 8). The functions of the Secretary of State in respect of the administration of such schemes has been delegated to the NHS Business Services Authority: see PARA 152.

6 Superannuation Act 1972 s 10(1)(a) (amended by the National Health Service Reorganisation Act 1973 s 57(2), Sch 5).



7 Superannuation Act 1972 s 10(1)(b). The Superannuation Act 1972 s 10(2A)-(6) (variously added and amended by the Pensions (Miscellaneous Provisions) Act 1990 ss 4, 8; Superannuation Act 1972 s 10(6) further amended by SI 2001/3649) makes detailed provision as to the provision which may be made by such regulations. The Secretary of State has powers to extend the persons to whom the regulations apply: see the Superannuation (Miscellaneous Provisions) Act 1967 s 7 (amended by the Superannuation Act 1972 Sch 6 para 66; the National Health Service Reorganisation Act 1973 Sch 5; the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 28, 29).

8 Ie the provisions of the Superannuation Act 1972 Sch 3: s 10(2)(a); and see **SOCIAL SECURITY AND PENSIONS**.

9 Superannuation Act 1972 s 10(2)(b).

10 Ie the scheme created under the National Health Service Pension Scheme Regulations 1995, SI 1995/300: see PARAS 717-739.

11 Ie the scheme created under the National Health Service Pension Scheme Regulations 2008, SI 2008/653: see PARAS 740-742.

12 Ie the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866: see PARA 744.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/(i) In general/712. Compensation for loss of office and premature retirement.

## **712. Compensation for loss of office and premature retirement.**

The Secretary of State<sup>1</sup> may, by regulations made with the consent of the Treasury<sup>2</sup>, provide for the payment, by such persons<sup>3</sup> as may be prescribed or determined, of pensions, allowances or gratuities by way of compensation to or in respect of persons in relation to whom a pension scheme may be made<sup>4</sup>, and who suffer loss of office or employment, or loss or diminution of emoluments in prescribed circumstances or on the happening of a prescribed event<sup>5</sup>. Such regulations may include provisions for the procedure on making a claim, make different provisions for different classes of persons or for different circumstances, authorise the making of exceptions and conditions, and be framed to have effect retrospectively<sup>6</sup>; and may include certain provisions set out by statute<sup>7</sup>.

Regulations have been made providing for the payment of compensation to or in respect of a person who is employed in the National Health Service in England and Wales and has prematurely retired from that employment by reason of redundancy or in the interests of the efficiency of the service<sup>8</sup>. The regulations specify the conditions necessary to qualify for, and the method of calculation of, the compensation<sup>9</sup>. They provide for the surrender of part of the compensation<sup>10</sup>, and the payment of compensation to the widow and certain dependants of such a person if he dies after becoming entitled to receive compensation<sup>11</sup>. Provision is also made for the adjustment and reduction in certain cases of the compensation<sup>12</sup>.

The regulations also contain miscellaneous provisions relating to the supply of information<sup>13</sup>, the assignability of compensation<sup>14</sup>, the procedure for the payment of compensation<sup>15</sup> and for the determination of questions arising under the regulations<sup>16</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 This function is exercised by the Treasury by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) paras 512-517.

3 As to the meaning of 'person' see para 17 note 2.

4 I.e. persons in relation to whom a scheme may be made under the Superannuation Act 1972 s 10: see PARA 711.

5 See the Superannuation Act 1972 s 24(1). As to the regulations made see the text to notes 8-16. The National Health Service (Compensation) Regulations 1974, SI 1974/1748, have also been made providing for compensation in respect of loss of office etc, attributable to the reorganisation of the health service at that time.

6 See the Superannuation Act 1972 s 24(3). Any such retrospective operation must not place an individual in a worse position than he would otherwise have been in: see s 24(3).

7 See the Superannuation Act 1972 s 24(4). The provisions are those of Sch 3 paras 8, 9, 13: see s 24(4); and **SOCIAL SECURITY AND PENSIONS**.

8 See the National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311.

9 See the National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311, regs 3-6 (reg 3 substituted, reg 5 amended, by SI 2006/2919; National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311, reg 4 amended by SI 2008/655).

10 See the National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311, reg 7 (amended by SI 2005/3074).

11 See the National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311, regs 8, 9 (both amended by SI 2005/3074).

12 See the National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311, regs 10, 11.

13 See the National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311, reg 12.

14 See the National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311, reg 13.

15 See the National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311, reg 14.

16 See the National Health Service (Compensation for Premature Retirement) Regulations 2002, SI 2002/1311, reg 15 (amended by SI 2007/3280).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/(i) In general/713. Increase of pensions.

### **713. Increase of pensions.**

The Treasury<sup>1</sup>, or the Secretary of State<sup>2</sup> with Treasury approval<sup>3</sup>, may make regulations<sup>4</sup> for conferring on: (1) persons who have been employed in a specified capacity<sup>5</sup>; and (2) persons who are subject to a scheme approved for the purpose<sup>6</sup>, such benefits, enjoyable after the termination of employment, as appear to be appropriate having regard to statutory provisions concerning the rate of official pensions<sup>7</sup>. Such regulations may make different provision for different classes of person, and may provide for such benefits to date from before the making of the regulations<sup>8</sup>.

Provision is made for the increase of the basic rate of official pensions<sup>9</sup> of classes prescribed for the purpose<sup>10</sup>.

1 This function is exercised by the Treasury by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

2 As to the Secretary of State see PARA 6 note 8.

3 See the Pensions (Increase) Act 1971 s 13(4) (amended by SI 1974/1264; SI 1979/1451).

4 As to the regulations made see the Pensions Increase (Approved Schemes) (National Health Service) Regulations 1976, SI 1976/1451 (amended by SI 1989/711; SI 1991/2419).

5 The capacities so specified relate to posts in hospital management, and to general medical or dental practice: see the Pensions (Increase) Act 1971 s 13(2)(a), Sch 6 paras (e), (f).

6 See the Pensions (Increase) Act 1971 s 13(2)(b).

7 See the Pensions (Increase) Act 1971 s 13(2) (amended by the Superannuation Act 1972 Sch 6 para 88). The statutory provisions referred to are contained in the Pensions (Increase) Act 1971 Pt I (ss 1-9), relating to the official pensions: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 576-613.

8 Pensions (Increase) Act 1971 s 13(5).

9 This includes pensions relating to the National Health Service: see the Pensions (Increase) Act 1971 ss 5(1), 17, Sch 2 paras 22, 23 23A; Pensions (Increase) Act 1974 s 4.

10 See the Pensions (Increase) Act 1971 s 1; the Pensions Increase (National Health Service Pensions) Regulations 1974, SI 1974/975; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 614 et seq.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/(i) In general/714. Certification of contracted-out employment.

#### **714. Certification of contracted-out employment.**

A person is entitled to contract out of the National Health Service pension scheme<sup>1</sup>. Accordingly, in relation to employment entitling a person to benefits under the National Health Service pensions scheme<sup>2</sup>, the Secretary of State<sup>3</sup> may by regulations<sup>4</sup>: (1) direct that elections with a view to the issue, variation or cancellation of contracting-out certificates<sup>5</sup> are to be made and revoked by the Her Majesty's Revenue and Customs<sup>6</sup> instead of by the employer<sup>7</sup>; (2) make provision for other things which<sup>8</sup> are required or authorised to be done by or to an employer to be done instead by or to the Revenue and Customs<sup>9</sup>; (3) make provision for treating any employments of the class in question as employments under a single employer different from the employer in any other employment<sup>10</sup>; and (4) make provision for the recovery by the Revenue and Customs of any state scheme premium from any person where it has been paid by the Revenue and Customs instead of by that person<sup>11</sup>.

1 See the Pension Schemes Act 1993 Pt III (ss 7-39); and **SOCIAL SECURITY AND PENSIONS**.

2 See the Pension Schemes Act 1993 s 39, Sch 2 para 7(1)(c).

3 As to the Secretary of State see PARA 6 note 8.

4 Pension Schemes Act 1993 Sch 2 para 7(4). As to the regulations made see the Occupational Pension Schemes (Certification of Employments-National Health Service) Regulations 1977, SI 1977/1921.

5 Ie the certificate of contracting-out of an occupational pension scheme under the Pension Schemes Act 1993 Pt III.

6 As to Her Majesty's Revenue and Customs see **INCOME TAXATION** vol 23(1) (Reissue) PARA 31 et seq.

7 Pension Schemes Act 1993 Sch 2 para 7(4)(a) (reg 7(4)(a), (b), (d) amended by the Social Security Contributions (Transfer of Functions, etc) Act 1999 Sch 1 para 62(1), (5)).

8 Ie by or under the provisions mentioned in the Pension Schemes Act 1993 Sch 2 para 4(l).

9 Pension Schemes Act 1993 Sch 2 para 7(4)(b) (as amended: see note 7).

10 Pension Schemes Act 1993 Sch 2 para 7(4)(c).

11 Pension Schemes Act 1993 Sch 2 para 7(4)(d) (as amended: see note 7).



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### **715. Transfer of staff from civil service to health service.**

Where a person becomes an employee of a body constituted under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 (other than an NHS trust or an NHS foundation trust)<sup>1</sup> on direct transfer from employment in the civil service of the state<sup>2</sup>, his period of employment in the civil service of the state at the time of the transfer counts<sup>3</sup> as a period of employment by the body whose employee he becomes, and the transfer does not break the continuity of the period of employment or give rise to any right to a redundancy payment<sup>4</sup>.

1 As to health service bodies in England and Wales see PARA 75.

2 As to employment in the civil service see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 549 et seq.

3 Ie for the purposes of the Employment Rights Act 1996.

4 Health and Medicines Act 1988 s 18 (amended by the Employment Rights Act 1996 Sch 1 para 40; the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 115, 120). As to contracts of employment see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/(i) In general/716. Transfer of employees between health service employers.

## **716. Transfer of employees between health service employers.**

Provision is made in respect of certain medical or dental practitioners while undergoing professional training which involves that person being employed successively by a number of different health service employers<sup>1</sup>, whereby various statutory provisions relating to employment<sup>2</sup> apply, where such a person in the employment of one health service employer is taken into employment by another such employer, so that his period of employment at the time of the change of employer counts as a period of employment with the second-mentioned employer and the change of employer does not break the continuity of the period of employment<sup>3</sup>.

1 See the Employment Protection (Continuity of Employment of National Health Service Employees) (Modification) Order 1996, SI 1996/1023, regs 1(2), 2. 'Health service employers' are a strategic health authority, a health authority, a special health authority, an NHS trust, an NHS foundation trust, a primary care trust, and certain bodies in Scotland and Northern Ireland: see reg 1(2) (definition amended by SI 2000/694; SI 2002/2469; SI 2004/696; SI 2005/1622). As to strategic health authorities see PARA 94 et seq. As to health authorities see PARA 449 note 1. As to the special health authorities see PARA 136. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to primary care trusts see PARA 111.

2 See the Employment Rights Act 1996 ss 52, 65, 79, 86, 92, 108: see **EMPLOYMENT**.

3 See the Employment Protection (Continuity of Employment of National Health Service Employees) (Modification) Order 1996, SI 1996/1023, regs 3, 4.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/(ii) National Health Service Pension Scheme 1995/A. MEMBERSHIP AND CONTRIBUTIONS/717. Membership of the scheme.

## **(ii) National Health Service Pension Scheme 1995**

### **A. MEMBERSHIP AND CONTRIBUTIONS**

#### **717. Membership of the scheme.**

Subject to restrictions on membership<sup>1</sup>, officers, medical and dental practitioners and trainee practitioners are eligible to join the scheme<sup>2</sup>. Each eligible person, on commencing NHS employment<sup>3</sup>, is included in the scheme automatically, unless he opts not to be included<sup>4</sup>. A person who, on 6 March 1995<sup>5</sup>, was not included in the scheme automatically, may, if eligible, join the scheme by applying on a form provided by the employing authority<sup>6</sup>. A person who is included in the scheme may opt out at any time<sup>7</sup>. Persons who opt out of the scheme may, if eligible to do so, join or rejoin the scheme<sup>8</sup>. Provision is made for any person who was eligible to be an active member of the scheme but who opted out of it and made contributions to a personal pension scheme, and who suffered loss as a result of a mis-sold personal pension scheme<sup>9</sup>, to elect to rejoin the scheme<sup>10</sup>.

Persons who cease to satisfy the conditions for eligibility for membership may not contribute to or accrue further pensionable service under the scheme<sup>11</sup>. Persons whose pensions under the scheme are payable may not contribute to or accrue further pensionable service under the scheme, except in the certain cases<sup>12</sup>.

1 As to restrictions on membership see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B2 (substituted by SI 2008/654).

2 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B1(1). 'Scheme', except where the context otherwise requires, means the National Health Service Pension Scheme for England and Wales, the rules of which are set out in the National Health Service Pension Scheme Regulations 1995, SI 1995/300: reg A2.

3 'NHS employment' means employment with an employing authority: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2. 'Employing authority' means a strategic health authority, a special health authority, a primary care trust, a local health board, an NHS trust, an NHS foundation trust, any other body that is constituted under an Act relating to health services and which the Secretary of State agrees to treat as an employing authority for the purposes of the pension scheme, and certain other service providers: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2 (definition amended by SI 1997/1888; SI 1998/666; SI 2000/605; SI 2002/2469; SI 2003/631; SI 2004/696; SI 2005/661; SI 2007/3280). As to strategic health authorities see PARA 94 et seq. As to special health authorities see PARA 136. As to primary care trusts see PARA 111. As to local health boards see para 74. As to NHS trusts see para 155. As to NHS foundation trusts see para 174. As to the Secretary of State see para 6 note 8.

4 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B1(2). As to opting out of the scheme see reg B4 (amended by SI 2005/661). See also the text to note 8.

5    le the date the regulations came into force: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A1(2).

6    National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B1(3).

7    National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B1(4).

8    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B4(5), (5A) (reg B4(5) amended, (5A) added, by SI 2005/661). A person who has opted-out may not join or rejoin the scheme during a period of absence from work for any reason: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B4(6). A person must not be treated as having retired from pensionable employment by reason only of having opted-out of the scheme: reg B4(7).

9    le as the result of a contravention which is actionable under the Financial Services Act 1986 s 62 (repealed) or the Financial Services and Markets Act 2000 s 150: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 33.

10   See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B5 (added by SI 1997/80; and amended by SI 2001/3649, SI 2006/600).

11   See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B3(1) (amended by SI 2008/654). As to pensionable service see PARA 719.

12   See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B3(2) (amended by SI 2008/654).

## **UPDATE**

### **717-718 Membership of the scheme, Pensionable pay and final year's pensionable pay**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

### **717 Membership of the scheme**

NOTE 1--SI 1995/300 reg B2 amended: SI 2008/2263, SI 2009/2446.

NOTES 2, 4, 6, 7--SI 1995/300 reg B1 amended: SI 2009/1298, SI 2009/2446.

NOTE 2--Definition of 'scheme' amended: SI 2009/2446.

NOTE 3--Definition of 'employing authority' further amended: SI 2008/2263.

NOTES 4, 8--SI 1995/300 reg B4 further amended: SI 2009/2446.

NOTE 10--SI 1995/300 reg B5 further amended: SI 2009/2446.

NOTE 11--SI 1995/300 reg B3(1) further amended: SI 2009/2446.

NOTE 12--SI 1995/300 reg B3(2) substituted by SI 2009/381, amended by SI 2009/2446; SI 1995/300 reg B3(3) added by SI 2009/381, amended by SI 2009/2446. SI 1995/300 reg B3(4)-(9) amended: SI 2009/1298.

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### **718. Pensionable pay and final year's pensionable pay.**

'Pensionable pay' means all salary, wages, fees and other regular payments made to a member<sup>1</sup> in respect of pensionable employment<sup>2</sup> as an officer, but does not include bonuses, payments made to cover expenses or payments for overtime<sup>3</sup>.

'Final year's pensionable pay' means pensionable pay in respect of the member's last year of pensionable employment<sup>4</sup>, ending on the date the member ceases to be in such employment, or dies, whichever occurs first<sup>5</sup>.

1 'Member', except where the context otherwise requires, means a person who is in pensionable service under the scheme or a person who has been in such service and in respect of whom benefits under the scheme are, or will become, payable: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2. As to pensionable service see PARA 719. As to the meaning of 'scheme' see PARA 717 note 2.

2 'Pensionable employment' means NHS employment in respect of which the member contributes to the scheme: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2. As to the meaning of 'NHS employment' see PARA 717 note 3. As to contributions by members to the scheme see PARA 721.

3 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C1(1)(a) (reg C1(1) substituted by SI 2005/661). Provision is made in respect of certain persons who do not receive such pay: see National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C1(1)(b) (as so substituted). Regulation C1(1) (as so substituted) is expressed to be subject to the provisions of reg C1 which sets out certain provisions regarding the calculation of pensionable pay.

4 If greater, the pay for the year preceding the last year of pensionable service, or the year before that, may be taken as the final year's pensionable pay for the purposes of the scheme: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C1(6)(a). As to the position where the member served less than 12 months' pensionable employment see reg C1(6)(b).

5 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C1(6).

### **UPDATE**

#### **717-718 Membership of the scheme, Pensionable pay and final year's pensionable pay**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

#### **718 Pensionable pay and final year's pensionable pay**

NOTE 2--Definition of 'pensionable employment' amended: SI 2009/2446.

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## **719. Pensionable service.**

'Pensionable service' is service which counts both for the purpose of ascertaining entitlement to benefits under the pensions regulations<sup>1</sup> and for the purpose of calculating them<sup>2</sup>. It is subject to certain periods being excluded<sup>3</sup> and means the aggregate of the periods specified in the regulations<sup>4</sup>. The benefits described in the regulations are calculated by reference to a maximum of 45 years' pensionable service in the case of a member<sup>5</sup> who is not a special class officer<sup>6</sup>, and, if the member's pensionable service exceeds these limits the amount of the excess will be ignored<sup>7</sup>. Where the member has pensionable service in excess of these limits, the Secretary of State<sup>8</sup> must select the years by reference to which the benefits are to be calculated and the years selected must be those which produce the most favourable results to the member<sup>9</sup>. If, when a member leaves pensionable employment or dies, a payment is made in respect of leave not taken: (1) his pensionable employment must be treated as continuing for a period equal to the period of leave for which payment is made; and (2) the payment must be treated as his pensionable pay<sup>10</sup> for that period<sup>11</sup>.

In order to calculate the length of a member's pensionable service, all periods of pensionable service must be added and each resulting period of 365 days<sup>12</sup> must be treated as one year<sup>13</sup>.

1    I.e. the National Health Service Pension Scheme Regulations 1995, SI 1995/300. As to benefits see PARA 723 et seq.

2    National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C2(1).

3    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C2(2) (amended by SI 2008/654).

4    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C2(1). The periods to be aggregated are, broadly: pensionable employment; contributing service under previous regulations; war service reckoned as contributing service; pensionable service credited as transferred from other pension arrangements; and periods of additional service: see reg C2(1)(a)-(e). As to the meaning of 'pensionable employment' see PARA 718 note 2. As to the war service which may be reckoned as contributing service see the National Health Service (Superannuation) (War Service, etc) Regulations 1977, SI 1977/1922 (amended by SI 1980/1949).

5    As to the meaning of 'member' see PARA 718 note 1.

6    National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C2(3)(a) (reg C2(3) substituted by SI 2008/654). In the case of a member who is a special class officer the period is 45 years' pensionable service (of which only 40 years may relate to the period before the member reaches age 55): National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg 2C(3)(b) (as so substituted). As to the time at which a person attains a particular age see para 36 note 7. 'Special class officer' means a member to whom reg R2 (special provision for certain nurses, physiotherapists, midwives and health visitors: see PARA 737) applies or to whom reg R3 (special provision for certain mental health officers: see PARA 737) applies: reg A2.

7 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C2(3) (as substituted: see note 6).

8 As to the Secretary of State see PARA 6 note 8.

9 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C2(4).

10 As to the meaning of 'pensionable pay' see PARA 718.

11 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C2(5).

12 Pensionable service on 29 February in a leap year must be disregarded: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C2(6).

13 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C2(6).

## **UPDATE**

### **719 Pensionable service**

NOTES 2-4--SI 1995/300 reg C2 amended: SI 2009/2446.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/(ii) National Health Service Pension Scheme 1995/A. MEMBERSHIP AND CONTRIBUTIONS/720. Qualifying service.

## **720. Qualifying service.**

'Qualifying service' is service which counts for the purpose of ascertaining entitlement to benefits under the pensions regulations<sup>1</sup> but not for the purpose of calculating them and means the aggregate of certain periods specified in the regulations<sup>2</sup>. Particular provision is made for calculating a member's<sup>3</sup> qualifying service if the member leaves and subsequently returns to pensionable employment<sup>4</sup>; and where a member is employed on a casual basis<sup>5</sup>, has more than one job<sup>6</sup>, or is a whole-time chaplain<sup>7</sup>.

1    Ie the National Health Service Pension Scheme Regulations 1995, SI 1995/300.

2    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C3(1). As to the periods to be aggregated see reg C3(1)(a)-(c) (reg C3(1)(ba) added by SI 2002/561).

3    As to the meaning of 'member' see PARA 718 note 1.

4    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C3(2)-(4). As to the meaning of 'pensionable employment' see PARA 718 note 2.

5    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C3(4A) (added by SI 2002/561).

6    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C3(5).

7    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg C3(6).

## **UPDATE**

## **720 Qualifying service**

NOTES 5, 7--SI 1995/300 reg C3(4A), (6) amended: SI 2009/2446.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/(ii) National Health Service Pension Scheme 1995/A. MEMBERSHIP AND CONTRIBUTIONS/721. Contributions by members.

## **721. Contributions by members.**

Each member<sup>1</sup> in pensionable employment<sup>2</sup> must contribute to the scheme<sup>3</sup>. Provision is made as to the calculation of the contributions<sup>4</sup>. If the member is a special class officer<sup>5</sup> contributions must be paid until the member reaches 65, or completes 45 years' pensionable service<sup>6</sup> and reaches age 60<sup>7</sup>. If a member is not a special class officer, contributions must be paid until the member reaches age 75 or completes 45 years' pensionable service<sup>8</sup>. The employing authority<sup>9</sup> must deduct each member's contributions from the member's earnings and pay them to the Secretary of State<sup>10</sup> no later than the nineteenth day of the month following the month in which the earnings were paid<sup>11</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to the meaning of 'pensionable employment' see PARA 718 note 2.

3 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D1(1) (substituted by SI 2008/654). As to the meaning of 'scheme' see PARA 717 note 2.

4 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D1(1A)-(1D), (2), (2A)-(2T) (reg D1(1A)-(1D), (2A)-(2T) added, (2) substituted, by SI 2008/654).

5 As to the meaning of 'special class officer' see PARA 719 note 6.

6 As to pensionable service see PARA 719.

7 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D1(3). As to the time at which a person attains a particular age see para 36 note 7.

8 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D1(4) (amended by SI 2008/654).

9 As to the meaning of 'employing authority' see PARA 717 note 3.

10 As to the Secretary of State see PARA 6 note 8.

11 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D1(5) (amended by SI 1998/2216). Without prejudice to any other method of recovery, where an employing authority has failed to

deduct contributions in accordance with the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D1(5), the Secretary of State may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member entitled to them where the member agrees to such a deduction, and the deduction is to the member's advantage: reg D1(6) (added by SI 2005/661).

## **UPDATE**

### **721 Contributions by members**

NOTES 3, 4--SI 1995/300 reg D1(1)-(2T) substituted by SI 2009/381, reg D1(1), (2D) amended by SI 2009/2446.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/(ii) National Health Service Pension Scheme 1995/A. MEMBERSHIP AND CONTRIBUTIONS/722. Contributions by employing authorities.

## **722. Contributions by employing authorities.**

Each employing authority<sup>1</sup> must contribute to the scheme<sup>2</sup>, in respect of each member in pensionable employment<sup>3</sup> with the authority, at such a rate as the Secretary of State specifies from time to time<sup>4</sup>. The Secretary of State must take the advice of the scheme actuary<sup>5</sup> and obtain the Treasury's<sup>6</sup> consent before specifying the rate at which employing authorities must contribute to the scheme<sup>7</sup>. In addition to such contributions, where, on leaving pensionable employment, a pension becomes payable to a member in respect of early retirement<sup>8</sup> the employing authority must make additional contributions to the Secretary of State<sup>9</sup>.

In the case of certain employing authorities which fail to pay or remit contributions in accordance with these provisions, the Secretary of State may thereafter require that authority to have in force a guarantee, indemnity or bond in a form and amount, and provided by a person<sup>10</sup>, approved by the Secretary of State, which provides for payment to the Secretary of State of all future liabilities of the employing authority<sup>11</sup> should that authority fail to meet them<sup>12</sup>.

1 As to the meaning of 'employing authority' see PARA 717 note 3. In any particular case the Secretary of State may direct that, for the purposes of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D2 'employing authority' includes one or more of certain other bodies: see reg D2(10) (added by SI 2007/3280). As to the Secretary of State see PARA 6 note 8.

2 Any such contributions must be paid to the Secretary of State on the same day as the member's contributions under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D1(5) (see PARA 721): reg D2(4). As to the meaning of 'scheme' see PARA 717 note 2. As to the meaning of 'member' see PARA 718 note 1.

3 As to the meaning of 'pensionable employment' see PARA 718 note 2.

4 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D2(1). When specifying a rate, the Secretary of State must include the cost of providing any increases in pensions which are payable by virtue of the Pensions (Increase) Act 1971 Pt I (see PARA 713): National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D2(1) (amended by SI 2003/631).

5 'Scheme actuary' means the actuary appointed from time to time by the Secretary of State to provide advice in connection with the scheme: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2 (definition added by SI 2007/3280).

6 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) paras 512-517.

7 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D2(2) (amended by SI 2007/3280).

8    Ie under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3 (early retirement on grounds of redundancy), or reg E3A (early retirement pension (termination of employment by employing authority)): see PARA 724.

9    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D2(3) (amended by SI 2003/631; SI 2004/665; SI 2005/3074; SI 2006/2919; SI 2007/3280; SI 2008/654). Where, on such a pension becoming payable, a pension also becomes payable to the member in respect of pensionable service with one or more other employing authorities, the employing authority in relation to whom the redundancy arose or by whom the consent to early retirement pension was given must also be responsible for making additional contributions in respect of that other pension: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D2(3). As to pensionable service see PARA 719. Provision is made as to time at which any additional contributions are payable to the Secretary of State: see reg D2(5)-(8) (all amended by SI 2007/3280; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D2(7) further amended by SI 2006/2919; SI 2008/654).

10   As to the meaning of 'person' see PARA 17 note 2.

11   Ie under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, or under the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619 (see PARA 743).

12   National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg D2(9) (added by SI 2005/661).

## **UPDATE**

### **722 Contributions by employing authorities**

NOTE 1--SI 1995/300 reg D2(10) amended: SI 2008/2263.

NOTES 4, 7--SI 1995/300 reg D2(1) amended, reg D2(2) further amended: SI 2009/2446.

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## ***B. ENTITLEMENT TO PENSION***

### **723. Normal retirement pension.**

A member<sup>1</sup> who retires from pensionable employment<sup>2</sup> on or after attaining age 60<sup>3</sup> is entitled to a pension<sup>4</sup>. The pension is at a yearly rate of one-eightieth of final year's pensionable pay<sup>5</sup> for each complete year of pensionable service<sup>6</sup>, plus the relevant daily proportion<sup>7</sup> of that rate for each additional day of such service<sup>8</sup>. A member who stays in pensionable employment until 75 is entitled to receive a pension at that age even if he does not retire from such employment<sup>9</sup>.

A member with at least two years' qualifying service<sup>10</sup>, who meets certain conditions and retires from pensionable employment before reaching age 60, is entitled to a pension calculated as described above, but it will then be reduced by such amount as the Secretary of State, after taking the advice of the scheme actuary<sup>11</sup>, may determine<sup>12</sup>. Where such a pension is payable, any other amount payable under the pension regulations<sup>13</sup> which is paid early is reduced in like manner<sup>14</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to the meaning of 'pensionable employment' see PARA 718 note 2.

3 As to the time at which a person attains a particular age see para 36 note 7.

4 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E1(1). Provision was made under previous superannuation regulations whereby further employment as a medical or dental practitioner within the National Health Service, between the ages of 65 and 70 years, was disregarded for the purpose of determining whether there should be a reduction in a pension payable under those regulations: see the National Health Service (Superannuation) Regulations 1980, SI 1980/362, reg 76 (revoked). This provision was revoked by the Health and Medicines Act 1988 s 9, but regulations were made providing that those practitioners who, in the month preceding the coming into force of such revocation (ie beginning on 1 March 1990 and ending on 31 March 1990), were taking advantage of the previous regulations, may continue to do so as if that provision had not been revoked: see the Health and Medicines Act 1988 (Superannuation) (Savings for Retired Practitioners) Regulations 1989, SI 1989/1893.

5 As to the meaning of 'final year's pensionable pay' see PARA 718.

6 As to the meaning of 'pensionable service' see PARA 719.

7 'Relevant daily proportion' is 1/365th of the amount which would apply in respect of one year: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2.

8 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E1(2).

9 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E1(3) (amended by SI 2008/654). Provided that the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member, where a member who leaves pensionable employment on or after 1 April 2008 becomes entitled to a pension under reg E1, the Secretary of State may discharge the liability for that pension by the payment of a lump sum: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E1(4)-(8) (added by SI 2008/654). As to the Secretary of State see PARA 6 note 8.

10 As to the meaning of 'qualifying service' see PARA 720.

11 As to the meaning of 'scheme actuary' see PARA 722 note 5.

12 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E5(1), (2) (reg E5(1) amended by SI 2006/600; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E5(2), (4) amended by SI 2007/3280). In certain circumstances such a pension is not payable: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E5(4) (as so amended).

13 Ie the National Health Service Pension Scheme Regulations 1995, SI 1995/300.

14 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E5(3).

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## **724. Early retirement pensions.**

In various circumstances a member<sup>1</sup> of the scheme<sup>2</sup> is entitled to a pension on early retirement.

A member who satisfies certain criteria and retires from pensionable employment<sup>3</sup> because of physical or mental infirmity, is entitled to an ill health pension on early retirement if he has at least two years' qualifying service<sup>4</sup> or qualifies for a normal retirement pension<sup>5</sup>.

A member<sup>6</sup> who meets certain conditions regarding his pensionable employment<sup>7</sup>, whose employment is terminated by his employing authority<sup>8</sup> before 1 October 2011<sup>9</sup>, and: (1) who has at least five years' qualifying service and has reached the specified pension age<sup>10</sup>; (2) in respect of whom the Secretary of State<sup>11</sup> certifies that the member's employment is terminated by reason of redundancy or, with the agreement of the employing authority, in the interests of the efficiency of the service in which he is employed<sup>12</sup>; and (3) whose employing authority does not certify that he has unreasonably refused to seek suitable alternative employment or accept an offer of such employment<sup>13</sup>, is entitled to a pension calculated in the same manner as a normal retirement pension<sup>14</sup>.

A member<sup>15</sup>: (a) whose pensionable employment is terminated by his employing authority; (b) who satisfies the prescribed conditions as to qualifying service, continuity of employment and alternative employment; (c) in respect of whom the Secretary of State certifies that the member's employment is terminated by reason of redundancy or, with the agreement of the employing authority, in the interests of the efficiency of the service in which he is employed; and (d) who makes a claim for the pension<sup>16</sup>, is entitled to a pension calculated in the same manner as a normal retirement pension<sup>17</sup>. Similar provision is made in respect of special class officers<sup>18</sup> whose employment is terminated on, or after, 1 October 2011<sup>19</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to the meaning of 'scheme' see PARA 717 note 2.

3 As to the meaning of 'pensionable employment' see PARA 718 note 2.

4 As to the meaning of 'qualifying service' see PARA 720.

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs E2, E2A-E2C (reg E2 amended by SI 2006/600, SI 2008/654; National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs E2A-E2C added by SI 2008/654). As to normal retirement pension see PARA 723.

6 Certain members are excepted: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3(4) (regs E3 substituted, E3A-E3D added by SI 2006/2919).



7 As to such conditions see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3(1)(a) (as substituted (see note 6); and amended by SI 2008/654).

8 As to the meaning of 'employing authority' see para 717 note 3.

9 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3(1)(b) (as substituted: see note 6).

10 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3(2)(a) (as substituted: see note 6).

11 As to the Secretary of State see para 6 note 8.

12 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3(2)(b) (as substituted: see note 6).

13 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3(2)(c) (as substituted: see note 6).

14 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3(3) (as substituted: see note 6). A member who satisfies the conditions specified in regs E3 and E3A (see the text to notes 15-17) and whose pensionable employment is terminated by his employing authority on, or after, 1 December 2006 but before 1 October 2011 may notify the Secretary of State as to which of those regulations he wishes to apply to him; and where he does not so notify the Secretary of State reg E3 applies: see reg E3B (as so substituted).

15 Certain members are excepted: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3A(4) (as added: see note 6).

16 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3A(1), (2) (as added: see note 6).

17 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3A(3) (as added: see note 6). See also reg E3D (as so added); and also note 14.

18 As to the meaning of 'special class officer' see para 719 note 6.

19 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E3C (as added: see note 6).

## **UPDATE**

### **724 Early retirement pensions**

NOTE 5--SI 1995/300 reg E2A amended: SI 2008/2263, SI 2009/381, SI 2009/2446. SI 1995/300 regs E2B, E2C amended: SI 2008/2263, SI 2009/381. SI 1995/300 regs E2 further amended: SI 2009/2446.



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## **725. Lump sum on retirement.**

Each member<sup>1</sup> is, on becoming entitled to a pension<sup>2</sup>, also entitled to a lump sum<sup>3</sup>. Subject to certain specified circumstances<sup>4</sup> the lump sum is equal to three times the yearly rate of the pension<sup>5</sup>. Where a member entitled to a lump sum has attained the age of 75<sup>6</sup> he ceases to be entitled to a lump sum, and is instead entitled to have his pension increased by such amount as the Secretary of State<sup>7</sup> may, after taking advice from the scheme actuary<sup>8</sup>, determine<sup>9</sup>.

A member whose pensionable employment<sup>10</sup> ceases on or after 1 April 2008 may opt to exchange part of a pension to which he would otherwise be entitled for a lump sum<sup>11</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 Ie under any of the National Health Service Pension Regulations 1995, SI 1995/300, regs E1-E5: see PARAS 723-724.

3 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E6(1) (amended by SI 2006/600). This provision is expressed to be subject to the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E6(8): see the text to notes 6-9.

4 The lump sum may be reduced in the case of a man whose pensionable service began before 25 March 1972 and who is or has been married: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E6(3)-(6). Where the pension is an actuarially reduced pension (see PARA 723), the lump sum may also be actuarially reduced: see reg E6(7) (amended by SI 2007/3280).

5 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E6(2).

6 As to the time at which a person attains a particular age see para 36 note 7.

7 As to the Secretary of State see para 6 note 8.

8 As to the meaning of 'scheme actuary' see para 722 note 5.

9 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E6(8) (added by SI 2006/600).

10 As to the meaning of 'pensionable employment' see PARA 718 note 2.

11 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E7 (added by SI 2008/654).

**UPDATE**

**725 Lump sum on retirement**

NOTE 5--SI 1995/300 reg E6(2) amended; reg E6(2A) added: SI 2009/381.

NOTE 11--SI 1995/300 reg E7 amended: SI 2009/381.

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### **C. LUMP SUM ON DEATH**

#### **726. Lump sum payable on death.**

A lump sum on death is payable:

- 484 (1) if a member<sup>1</sup> dies in pensionable employment<sup>2</sup> before reaching age 75<sup>3</sup>;
- 485 (2) if a member dies after his pension under the scheme<sup>4</sup> becomes payable<sup>5</sup>;
- 486 (3) if a member leaves pensionable employment with a preserved pension<sup>6</sup> and dies before his pension under the scheme becomes payable<sup>7</sup>;
- 487 (4) if a member leaves pensionable employment without becoming entitled to a pension<sup>8</sup> or a preserved pension and dies within 12 months<sup>9</sup> after leaving before receiving a refund of contributions<sup>10</sup> or before a transfer payment<sup>11</sup> is made<sup>12</sup>.

If a member dies without leaving a surviving partner<sup>13</sup> and without having made a nomination<sup>14</sup> in favour of another person, the lump sum must be paid to the member's personal representatives<sup>15</sup>. If a member dies leaving a surviving partner and without having made a nomination in favour of another person, the lump sum must, with certain exceptions, be paid to that surviving partner<sup>16</sup>; and if a member dies having made a nomination in favour of one or more nominees (whether or not he also leaves a surviving partner), the lump sum must, with certain exceptions, be paid to the nominee or nominees<sup>17</sup>. In the excepted cases the lump sum, or a proportion of it, must be paid to the member's personal representatives<sup>18</sup>. If the lump sum on death does not exceed £5000<sup>19</sup>, the Secretary of State<sup>20</sup> may pay it to any person claiming to be the member's personal representative or to be entitled to a share of it, without requiring proof of the title of the person concerned<sup>21</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to the meaning of 'pensionable employment' see PARA 718 note 2.

3 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F1(1), (2) (reg F1(1) amended by SI 2008/654). Specific provision is made in respect of persons in employment but no longer required to make pension contributions: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F1(1A) (added by SI 2007/3280; amended by SI 2008/654), and the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F1(1B) (added by SI 2008/654). As to the time at which a person attains a particular age see para 36 note 7.

4 As to the meaning of 'scheme' see para 717 note 2.

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F2 (amended by SI 2006/600; SI 2007/3280; SI 2008/654).

6    Ie under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg L1: see PARA 732.

7    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F3.

8    Ie under any of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs E1-E5: see PARAS 723-724.

9    As to the meaning of 'month' see PARA 28 note 16.

10   Ie under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg L2: see PARA 732.

11   Ie under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg M5: see PARA 733.

12   See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F4.

13   'Surviving partner' means a widow, widower, civil partner or nominated partner, who survives the member: reg F5(12) (reg F5 substituted by SI 2008/654). As to civil partnerships see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW**.

14   As to the making of nominations see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F5(6)-(9) (as substituted: see note 13).

15   See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F5(1), (2) (as substituted: see note 13). As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.

16   See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F5(1), (3) (as substituted: see note 13).

17   See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F5(1), (4), (5) (as substituted: see note 13).

18   See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F5(1), (3)-(5) (as substituted: see note 13).

19   Ie or any higher amount specified in an order made under the Administration of Estates (Small Payments) Act 1965 s 6(1) (see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 187) as the amount to be treated as substituted for references to £500 in s 1 of that Act: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F5(11) (as substituted: see note 13).

20   As to the Secretary of State see PARA 6 note 8.

21 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg F5(10) (as substituted: see note 13).

## **UPDATE**

### **726 Lump sum payable on death**

NOTE 5--SI 1995/300 reg F2 further amended: SI 2009/2446.

NOTE 7--SI 1995/300 reg F3 amended: SI 2009/2446.

NOTE 12--SI 1995/300 reg F4 amended: SI 2008/2263.

NOTE 14--SI 1995/300 reg F5(6), (9) amended: SI 2009/2446.

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## ***D. SURVIVING PARTNERS AND DEPENDANTS***

### **727. Widow's and widower's pension.**

Detailed provision is made if a male member<sup>1</sup> dies in certain circumstances<sup>2</sup> and leaves a surviving widow<sup>3</sup>. The pension entitlement differs according to which of the circumstances apply<sup>4</sup>. If a female member dies in similar circumstances to those which apply in the case of entitlement to a widow's pension<sup>5</sup> and leaves a surviving widower, the widower is entitled to a pension<sup>6</sup>. In general, the provisions relating to the calculation and payment of pensions for widowers are the same as those for pensions for widows<sup>7</sup>. A female member may, by giving notice in writing<sup>8</sup> to the Secretary of State<sup>9</sup> prior to leaving pensionable employment, nominate her husband to receive a dependent widower's pension on her death<sup>10</sup>. The Secretary of State must accept a member's nomination only if he is satisfied that the member's husband is permanently incapable of earning a living because of physical or mental infirmity and is wholly or mainly dependent on the member<sup>11</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 I.e. the circumstances described in any of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs G2-G6, as follows: death of the member in pensionable employment (reg G2 (amended by SI 2007/3280, SI 2008/654)); death after pension becomes payable (National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G3 (amended by SI 2008/654)); death with preserved pension (National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G4 (amended by SI 2008/654)); death within 12 months after leaving pensionable employment without pension or preserved pension (National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G5); or marriage of member after leaving pensionable employment (reg G6): reg G1(1). As to the meaning of 'pensionable employment' see PARA 718 note 2.

3 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G1 (amended by SI 2008/654).

4 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G1(1).

5 I.e. the circumstances described in any of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs G2-G6: see note 2.

6 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G7(1).

7 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G7(2)-(6) (reg G7(4) substituted by SI 2008/654). An officer in respect of whom a pension has not already become payable under reg E2 or E2A (ill health retirement pensions: see PARA 724) may, in respect of the whole or any part of the member's contributing service before 6 April 1988, elect to purchase an increase in the amount of any



widower's pension that becomes payable by virtue of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G7: see reg G16 (added by SI 2008/654). 'Officer' means a person, other than a registered medical practitioner providing services under the National Health Service, employed by an employing authority: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2 (definition amended by SI 2005/661). Provision is also made for cases where a female member elected before 1 July 1989 to buy an increased widower's pension: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G9 (amended by SI 2008/654).

8 As to the meaning of 'writing' see PARA 7 note 2.

9 As to the Secretary of State see PARA 6 note 8.

10 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G8(1).

11 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G8(2). As to the calculation of a dependent widower's pension see reg G8(3)-(6) (amended by SI 2008/654).

## **UPDATE**

### **727-729 Widow's and widower's pension ... Child allowance**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

### **727 Widow's and widower's pension**

NOTE 2--SI 1995/300 regs G2-G4 further amended, reg G6 amended: SI 2009/2446.

NOTE 3--SI 1995/300 reg G1 further amended: SI 2009/2446.

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## **728. Civil partner's and nominated partner's pensions.**

If a member<sup>1</sup> who is in a civil partnership<sup>2</sup> dies in similar circumstances to those which apply in the case of entitlement to a widow's pension<sup>3</sup> and leaves a surviving civil partner, the surviving civil partner is entitled to a pension<sup>4</sup>. The provisions relating to the calculation and payment of pensions for surviving civil partners are similar to those for pensions for widows<sup>5</sup>. Certain members may, in respect of the whole or any part of contributing service prior to 6 April 1988, elect to purchase an increase in the amount of any surviving civil partner's pension which may become payable<sup>6</sup>. A member who has formed a civil partnership may, by giving notice in writing<sup>7</sup> to the Secretary of State<sup>8</sup> prior to leaving pensionable employment<sup>9</sup>, nominate the other party to the civil partnership to receive a dependent surviving civil partner's pension on the member's death<sup>10</sup>. The Secretary of State must accept a member's nomination only if he is satisfied that the member's civil partner is permanently incapable of earning a living because of physical or mental infirmity and is wholly or mainly dependent on the member<sup>11</sup>.

A member who has pensionable service<sup>12</sup> on or after 1 April 2008 may, by giving notice in writing to the Secretary of State, nominate a person (known as the 'nominated partner') to receive a surviving nominated partner pension on the member's death and such a nomination is effective from the date the Secretary of State accepts it<sup>13</sup>. The Secretary of State must accept a member's nomination if: (1) the member and the nominated partner have jointly made and signed a declaration in the form required by the Secretary of State that remains effective at the member's death<sup>14</sup>; and (2) the nominated partner satisfies the Secretary of State that for a continuous period of at least two years ending with the member's death (a) the member and the nominated partner were living together as if they were husband and wife or civil partners; or (b) the member and the nominated partner were not prevented from marrying or entering into a civil partnership; or (c) the member and the nominated partner were financially interdependent or the nominated partner was financially dependent on the member; or (d) neither the member nor the nominated partner was living with a third person as if they were husband and wife or as if they were civil partners<sup>15</sup>. Certain officers<sup>16</sup> may, in respect of the whole or any part of their contributing service before 6 April 1988, elect to purchase an increase in the amount of any surviving nominated partner's pension that becomes payable<sup>17</sup>.

A member may, by giving notice in writing to the Secretary of State before leaving pensionable employment, apply for the member's nominated partner to receive a dependent surviving nominated partner's pension on the member's death<sup>18</sup>. The Secretary of State must accept a member's application only if the Secretary of State is satisfied that the member's nominated partner is permanently incapable of earning a living because of physical or mental infirmity, and wholly or mainly dependent on the member<sup>19</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to civil partnerships see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW**.

3    In the circumstances described in any of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs G2-G6: see PARA 727 note 2.

4    National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G10(1) (regs G10-G13 added by SI 2005/3074).

5    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G10(2)-(4) (reg G10 as added (see note 4); reg G10(4) substituted by SI 2008/654).

6    See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs G12, G13 (both as added (see note 4); reg G13 amended by SI 2008/654), and the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G16 (regs G14-G17 added by SI 2008/654).

7    As to the meaning of 'writing' see para 7 note 2.

8    As to the Secretary of State see para 6 note 8.

9    As to the meaning of 'pensionable employment' see para 718 note 2.

10   National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G11(1) (as added: see note 4).

11   National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G11(2) (as added: see note 4). As to the calculation of a dependent surviving civil partner's pension see reg G11(3)-(6) (amended by SI 2008/654).

12   As to the meaning of 'pensionable service' see PARA 719.

13   National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G14(1) (as added: see note 6). As to the calculation of such a pension see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G14(4)-(9) (as so added).

14   National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G14(2)(a) (as added: see note 6). A declaration ceases to have effect if: (1) it is revoked by the member or the nominated partner by a signed notice in writing given to the Secretary of State in the required form (if any); or (2) the member makes a later such declaration; or (3) the member or the nominated partner marries or enters into a civil partnership: reg G14(3) (as so added).

15   National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G14(2)(b) (as added: see note 6).

16   As to the meaning of 'officer' see PARA 727 note 7.

17   See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs G16, G17 (both as added: see note 6).

18 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G15(1) (as added: see note 6). As to the calculation of such a pension see reg G15(3)-(6) (as so added).

19 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg G15(2) (as added: see note 6).

## **UPDATE**

### **727-729 Widow's and widower's pension ... Child allowance**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

### **728 Civil partner's and nominated partner's pensions**

NOTE 13--SI 1995/300 reg G14(1) amended: SI 2009/2446.

NOTE 17--SI 1995/300 reg G16 amended: SI 2009/2446.

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## **729. Child allowance.**

Detailed provision is made for the payment of child allowance<sup>1</sup> to dependent children<sup>2</sup>. Different provisions apply depending on whether the member dies in pensionable employment<sup>3</sup>, or after the pension becomes payable<sup>4</sup>, or dies with a preserved pension<sup>5</sup> or within 12 months<sup>6</sup> after leaving pensionable employment without a pension or preserved pension<sup>7</sup>.

If a member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner or nominated partner of a parent) but that dependent child is not being maintained by the surviving parent (or spouse or civil partner or nominated partner of a parent), the Secretary of State<sup>8</sup> may increase the amount of the child allowance that would otherwise be payable<sup>9</sup>. The allowance may, at the Secretary of State's discretion, be increased up to an amount equal to the amount that would have been payable if there were no surviving parent (or spouse or civil partner or nominated partner of a parent)<sup>10</sup>.

<sup>1</sup> As to the payment of child allowance see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H2.

<sup>2</sup> 'Dependent child' means any child who is:

- 46 (1) a child or grandchild of the member;
- 47 (2) a stepchild of the member by marriage entered into or a civil partnership formed before the date on which the member leaves pensionable employment or a child legally adopted by the member before that date;
- 48 (3) a brother or sister, or a child of a brother or sister, of the member or the member's spouse, civil partner or nominated partner (any half-brother or step-brother being treated as a brother, and any half-sister or step-sister being treated as a sister, for this purpose);
- 49 (4) a child who, immediately before the member left pensionable employment, the member had intended to adopt, or a child who, at that time, had been dependent on the member for two years or (if less) half the child's life; or
- 50 (5) a child of a member's nominated partner from a nominated partnership formed before the date on which the member leaves pensionable employment,

and who satisfies the following requirements: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H1(1) (amended by SI 2005/3074; SI 2008/654). The child must be: (a) born before the member leaves pensionable employment and be dependent on the member when the member dies and, if the member dies after leaving pensionable employment, also be dependent on the member when the member leaves pensionable employment (National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H1(2) (a)); or (b) be born one year or less after the member leaves pensionable employment and either be dependent on the member both immediately after being born and when the member dies, or would have become dependent on the member if the member had not died before the child was born (reg H1(2)(b)).

A child is a dependent child of a person whose pensionable employment ceases on or after 1 April 2008 for so long as that child is under age 23, or aged 23 or over and incapable of earning a living because of permanent physical or mental infirmity from which that child was suffering at the time the member died: reg H1(2A) (added by SI 2008/654). A child is a dependent child of a person whose pensionable employment ceases on or before 31 March 2008 while he is: (i) under 17; or (ii) 17 or over but has not reached the age of 23 and is (A) in

continuing full time education; or (B) participating in certain full time training; or (C) taking a break in such education or training; or (D) incapable of earning a living because of permanent physical or mental infirmity from which he started to suffer whilst qualifying as a dependent child; or (E) has ceased to be a dependent child but returns to full-time education or training: see reg H1(3)-(5), (7) (reg H1(3), (4), (7) amended by SI 2006/600; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H1(3) further amended by SI 2008/654). A child who is incapable of earning a living because of permanent physical or mental infirmity from which he was suffering at the time the member died is dependent for so long as he remains incapable of earning a living: see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H1(6) (amended by SI 2006/600). As to the meaning of 'member' see PARA 718 note 1. As to adoption see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 323 et seq. As to civil partnerships see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW**. As to the meaning of 'nominated partner' see PARA 728. As to the meaning of 'pensionable employment' see PARA 718 note 2. As to the time at which a person attains a particular age see para 36 note 7.

3 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H3 (amended by SI 2005/3074; SI 2007/3280; SI 2008/654).

4 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H4 (amended by SI 2005/3074; SI 2008/654).

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H5 (amended by SI 2005/3074; SI 2008/654).

6 As to the meaning of 'month' see PARA 28 note 16.

7 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H6.

8 As to the Secretary of State see PARA 6 note 8.

9 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H7(1) (reg H7 amended by SI 2005/3074; SI 2008/654).

10 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg H7(2) (as amended: see note 9).

## **UPDATE**

### **727-729 Widow's and widower's pension ... Child allowance**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

### **729 Child allowance**

NOTE 3--SI 1995/300 reg H3 further amended: SI 2009/2446.

NOTE 4--SI 1995/300 reg H4 further amended: SI 2009/381, SI 2009/2446.

NOTE 5--SI 1995/300 reg H5 further amended: SI 2008/2263, SI 2009/2446.



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### **730. Allocation to a spouse, civil partner or dependant.**

A member<sup>1</sup> may elect to allocate part of his pension under the scheme<sup>2</sup> so as to provide, following his death, a pension for a spouse, civil partner<sup>3</sup> or a dependant<sup>4</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to the meaning of 'scheme' see PARA 717 note 2.

3 As to civil partnerships see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW**.

4 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg J1(1) (reg J(1), (2) amended by SI 2005/3074). As to the manner of allocation see reg J1(2)-(7) (reg J1(2) as so amended; reg J1(3), (4) amended by SI 2007/3280; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg J1(4) further amended by SI 2008/654). As to limits on allocation of pensions see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg J2 (amended by SI 2005/3074). As to the date on which allocation has effect see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg J3 (amended by SI 2005/3074).

### **UPDATE**

### **730 Allocation to a spouse, civil partner or dependant**

NOTE 4--SI 1995/300 reg J1(1), (4), J2 further amended, reg J1(7) amended: SI 2009/2446.



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## **E. CONTRACTING-OUT**

### **731. Contracting-out.**

The scheme<sup>1</sup> will be administered in conformity with the contracting-out conditions<sup>2</sup>, and detailed provision is made in this regard in connection with guaranteed minimum pensions<sup>3</sup>, late retirement<sup>4</sup>, early leavers<sup>5</sup>, guaranteed minimum pensions transferred to the scheme<sup>6</sup>, protected rights transferred to the scheme<sup>7</sup> and state scheme premiums<sup>8</sup>.

1 As to the meaning of 'scheme' see PARA 717 note 2.

2 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg K1 (substituted by SI 2008/654). 'Contracting-out conditions' means the conditions specified in the Pension Schemes Act 1993 s 9(2A), (2B) (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 882): National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg K1(3)(a) (as so substituted). The provisions dealing with contracting out (regs K2-K7: see the text to notes 3-8) override any inconsistent regulations except in cases where a trivial pension is commuted in accordance with reg T7 (see PARA 739), a pension is commuted in accordance with regs E2(10), E2A(10) (see PARA 724) or L1(5) (see PARA 732), or a pension is forfeited for the reasons specified in reg T6(1)(b) or (c) (see PARA 739): reg K1(1), (2) (as so substituted).

3 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg K2 (amended by SI 2005/3074; SI 2008/654). 'Guaranteed minimum pension' is a pension calculated in accordance with the guaranteed minimum requirements as defined in the Pension Schemes Act 1993 ss 13-17 (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) para 891): National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg K1(3)(b) (as substituted: see note 2).

4 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg K3.

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg K4.

6 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg K5.

7 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg K6 (amended by SI 2005/3074).

8 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg K7 (amended by SI 2005/3074).

## **UPDATE**

### **731 Contracting-out**

NOTE 2--SI 1995/300 reg K1 amended: SI 2009/2446.

NOTE 3--SI 1995/300 reg K2 further amended: SI 2009/2446.

NOTES 5, 6--SI 1995/300 regs K4, K5 amended: SI 2009/2446.

NOTES 7, 8--SI 1995/300 regs K6, K7 amended: SI 2009/2446.

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## ***F. EARLY LEAVERS***

### **732. Preserved pension, refund of contributions, and return to pensionable employment.**

A member<sup>1</sup> who leaves pensionable employment<sup>2</sup> before age 60<sup>3</sup> without becoming entitled to a pension<sup>4</sup> is entitled to receive a pension, known as a 'preserved pension', and retirement lump sum from age 60 if he meets certain conditions<sup>5</sup>. In certain cases the entitlement arises before the member reaches age 60<sup>6</sup>.

A member who leaves pensionable employment without becoming entitled to a pension<sup>7</sup> or a preserved pension is entitled to receive a lump sum refund of his contributions<sup>8</sup>. Compound interest will be added to such a refund of contributions, except where the employment was terminated by reason of misconduct or inefficiency or at the member's request<sup>9</sup>.

Provision is made in relation to any member who leaves pensionable employment without becoming entitled to a pension and later returns to pensionable employment before becoming entitled to receive a pension under the scheme<sup>10</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to the meaning of 'pensionable employment' see PARA 718 note 2.

3 As to the time at which a person attains a particular age see para 36 note 7.

4 Ie under any of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs E1-E5: see PARAS 723-724.

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg L1 (amended by SI 2000/605; SI 2003/631; SI 2004/665; SI 2008/654).

6 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg L1(3) (amended by SI 2000/605; SI 2006/600; SI 2008/654).

7 Ie under any of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs E1-E5: see PARAS 723-724.

8 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg L2 (amended by SI 2005/3074; SI 2006/600; SI 2008/654).

9 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg L3(1). As to the calculation of interest see reg L3(2)-(3).

10 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg L4 (amended by SI 1998/666; SI 2003/2322; SI 2005/3074; SI 2008/654). As to the meaning of 'scheme' see PARA 717 note 2.

## **UPDATE**

### **732 Preserved pension, refund of contributions, and return to pensionable employment**

NOTE 5--SI 1995/300 reg L1 further amended: SI 2008/2263, SI 2009/381, SI 2009/2446.

NOTE 8--SI 1995/300 reg L2 further amended: SI 2008/2263, SI 2009/2446.

NOTE 9--SI 1995/300 reg L3(3) further amended: SI 2009/2446.

NOTE 10--SI 1995/300 reg L4 further amended: SI 2009/2446.

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## ***G. TRANSFERS***

### **733. Transfers and buy-outs.**

A member<sup>1</sup> who leaves pensionable employment<sup>2</sup> with a preserved pension<sup>3</sup> has the right to require the Secretary of State<sup>4</sup> to transfer or buy-out the member's rights under the scheme<sup>5</sup>. Detailed provision is made dealing with the exercise of the right to transfer or buy-out<sup>6</sup>, the amount of the member's cash equivalent<sup>7</sup>, applications for transfer value payments<sup>8</sup>, and bulk transfers<sup>9</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to the meaning of 'pensionable employment' see PARA 718 note 2.

3 As to the meaning of 'preserved pension' see PARA 732.

4 As to the Secretary of State see PARA 6 note 8.

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg M1 (regs M1-M6 substituted by SI 2008/654). As to the meaning of 'scheme' see PARA 717 note 2.

6 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg M2 (as substituted: see note 5).

7 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg M3 (as substituted: see note 5).

8 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs M4, M5 (both as substituted: see note 5).

9 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg M6 (as substituted: see note 5).

## **UPDATE**

### **733 Transfers and buy-outs**

NOTE 5--SI 1995/300 reg M1 amended: SI 2009/2446.

TEXT AND NOTES 6-9--Provision is also made in relation to a member's right to transfer a preserved pension to the National Health Service Pension Scheme set out in the National Health Service Pension Scheme Regulations 2008, SI 2008/653: SI 1995/300 reg M7 (added by SI 2008/2263, amended by SI 2009/2446).

NOTE 6--SI 1995/300 reg M2 amended: SI 2009/2446.

NOTE 7--SI 1995/300 reg M3 amended: SI 2008/2263, SI 2009/2446.

NOTE 8--SI 1995/300 reg M5 amended: SI 2009/2446.

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### **734. Transfers from other pension arrangements.**

Within 12 months<sup>1</sup> after joining the scheme<sup>2</sup>, a member<sup>3</sup> in pensionable employment<sup>4</sup> may, in writing<sup>5</sup>, request the Secretary of State<sup>6</sup> to accept a transfer payment in respect of the member's rights under another occupational pension scheme<sup>7</sup>, a personal pension scheme<sup>8</sup>, or a buy-out policy<sup>9</sup> but not in respect of rights under a free-standing AVC scheme<sup>10</sup>. Conditions must be met before the Secretary of State will accept a transfer payment<sup>11</sup>.

If the Secretary of State accepts the transfer payment, the member will be credited with an additional period of pensionable service<sup>12</sup>. For the purposes of calculating a member's final year's pensionable pay<sup>13</sup>, any period of pensionable service with which a member is credited in respect of a transfer payment will be treated as pensionable employment and the pensionable pay<sup>14</sup> by reference to which that service is calculated will be treated as pensionable pay received in respect of that employment<sup>15</sup>.

Additional provision is made in respect of transfers in respect of more than one member<sup>16</sup>.

1 As to the meaning of 'month' see PARA 28 note 16.

2 As to the meaning of 'scheme' see PARA 717 note 2.

3 As to the meaning of 'member' see PARA 718 note 1.

4 As to the meaning of 'pensionable employment' see PARA 718 note 2.

5 As to the meaning of 'writing' see PARA 7 note 2.

6 As to the Secretary of State see PARA 6 note 8.

7 'Occupational pension scheme' means an occupational pension scheme within the meaning of the Pension Schemes Act 1993 s 1 (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 741) which: (1) in the case of such a scheme established on, or after, 6 April 2006 is a registered pension scheme for the purposes of the Finance Act 2004 and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg M (see PARA 733) and reg N; (2) in the case of such a scheme established before that date, was: (a) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of the Income and Corporation Taxes Act 1988 Pt XIV Ch 1 (retirement benefits schemes) or whose application for approval under that Chapter was under consideration; (b) a statutory scheme as defined in the Income and Corporation Taxes Act 1988 s 612(1) (interpretation); or (c) a scheme to which the Income and Corporation Taxes Act 1988 s 608 applied (superannuation funds approved before 6 April 1980); and on 6 April 2006 became a registered pension scheme for the purposes of the Finance Act 2004 (see **SOCIAL SECURITY AND PENSIONS**): National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2 (definition substituted by SI 2006/600).

8 'Personal pension scheme' means a personal pension scheme which: (1) in the case of such a scheme established on, or after, 6 April 2006 is a registered pension scheme for the purposes of the Finance Act 2004 and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg M (see PARA 733) and reg N; (2) in the case of a scheme established before that date, was (a) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of the Income and Corporation Taxes Act 1988 Part XIV Ch IV (personal pension schemes); and (b) on 6 April 2006 became a registered pension scheme for the purpose of the Finance Act 2004: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2 (definition substituted by SI 2006/600).

9 'Buy-out policy' means a policy of insurance or annuity contract that is appropriate for the purposes of the Pension Schemes Act 1993 s 19 (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 894) and satisfies any requirements of the Inland Revenue and 'buy out' must be construed accordingly: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg A2.

10 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg N1(1) (substituted by SI 2006/600). A 'free-standing AVC scheme' is one: (1) established on, or after, the 6 April 2006 as a registered free-standing AVC scheme for the purposes of the Finance Act 2004 (see **SOCIAL SECURITY AND PENSIONS**); or (2) which on 6 April 2006 became a registered free-standing AVC scheme for the purposes of that Act and which immediately before that date was approved by the Commissioners for Her Majesty's Revenue and Customs by virtue of the Income and Corporation Taxes Act 1988 s 591(2)(h) (free-standing AVC schemes: see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 751): National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg N1(1)(a), (b) (as so substituted).

11 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg N1(2)-(3A) (reg N1(2) amended by SI 2008/654; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg N1(3) amended, (3A) added, by SI 2002/561; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg N1(3) further amended by SI 1997/80).

12 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg N1(4) (amended by SI 1997/80). The additional period of pensionable service is such as described in whichever of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg N2 (transfers made under the Public Sector Transfer Arrangements), N3 (transfers that are not made under the Public Sector Transfer Arrangements) and N3A (added by SI 1997/80; and amended by SI 2007/3280) (transfers in respect of members to whom the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg B5 (see PARA 717) applies who elect to join or rejoin the scheme) is applicable. As to the meaning of 'pensionable service' see PARA 719.

13 As to the meaning of 'final year's pensionable pay' see PARA 718.

14 As to the meaning of 'pensionable pay' see PARA 718.

15 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg N1(5).

16 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg N4 (substituted by SI 2002/561; and amended by SI 2007/3280).

## UPDATE

### 734 Transfers from other pension arrangements

NOTE 10--SI 1995/300 reg N1(1) amended: SI 2009/2446.



NOTE 11--SI 1995/300 reg N1(3) further amended: SI 2009/2446.

NOTE 12--SI 1995/300 reg N1(4), N3 further amended: SI 2009/2446.

NOTE 16--SI 1995/300 reg N4 further amended: SI 2009/2446.

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## **H. ABSENCES**

### **735. Members absent from work.**

Where a member<sup>1</sup> is absent from work because of illness or injury or is on maternity leave, adoption leave, paternity leave or parental leave<sup>2</sup>, the period of absence will count as pensionable service<sup>3</sup> for so long as the member contributes<sup>4</sup> to the scheme<sup>5</sup>. For a member who starts a leave of absence from work on, or after, 1 April 2008 for reasons other than those referred to above, a period of absence will count as pensionable service if for a continuous period not exceeding six months<sup>6</sup> commencing with the member's first day of leave of absence, the member contributes to the scheme<sup>7</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg P1(1) (amended by SI 2003/2322; SI 2007/3280).

3 As to the meaning of 'pensionable service' see PARA 719.

4 As to detailed provision in relation to such contributions see the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg P1(3)-(8) (reg P1(4) amended, (4A) added, (8) substituted, by SI 2007/3280; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg P1(4) further amended by SI 2003/2322).

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg P1(2). As to the meaning of 'scheme' see PARA 717 note 2.

6 As to the meaning of 'month' see PARA 28 note 16.

7 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg P2 (amended by SI 2008/654).

## **UPDATE**

### **735 Members absent from work**

NOTE 4--SI 1995/300 reg P1(3), (5) amended: SI 2009/2446.

NOTE 5--SI 1995/300 reg P1(2) amended: SI 2009/2446.

NOTE 7--SI 1995/300 reg P2 further amended: SI 2008/2263, SI 2009/2446.



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## ***I. ADDITIONAL BENEFITS***

### **736. Rights to buy additional service, additional pension, and unreduced retirement lump sum.**

A member<sup>1</sup> in pensionable employment<sup>2</sup> may increase his rights to benefits under the scheme<sup>3</sup>, by buying additional service<sup>4</sup>. A member in pensionable employment whose pensionable service<sup>5</sup> started before 25 March 1972 and who is, or has been, married, may make payments to the scheme to off-set all or part of any reduction in the lump sum payable to the member<sup>6</sup> on retirement<sup>7</sup>. Detailed provision is made as to the exercise of these rights<sup>8</sup>.

A member who is in pensionable employment may opt to make additional periodical contributions during the contribution option period<sup>9</sup> to increase by a specified amount the benefits payable to the member<sup>10</sup>, or those benefits and the benefits otherwise payable<sup>11</sup> in respect of surviving partners and dependent children<sup>12</sup>. A member may also opt to make a single lump sum contribution to increase such benefits by a specified amount<sup>13</sup>, as may the member's employing authority<sup>14</sup>. Detailed provision is made as to the exercise of such options and related matters<sup>15</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to the meaning of 'pensionable employment' see PARA 718 note 2.

3 As to the meaning of 'scheme' see PARA 717 note 2.

4 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg Q1 (amended by SI 1998/666; SI 2005/3074; SI 2007/3280; SI 2008/654).

5 As to the meaning of 'pensionable service' see PARA 719.

6 Ie under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E6: see PARA 725.

7 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg Q2 (amended by SI 2005/3074; SI 2008/654).

8 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs Q3-Q7 (regs Q4-Q7 all amended by SI 2008/654; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg Q5 further amended by SI 2005/3074; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg Q7 further amended by SI 2007/3280).

9 'Contribution option period' means a period of whole years, that is specified in the option, that begins with the pay period in respect of which the first contribution is made under the option, is not less than one year nor more than 20 years, and does not end later than the member's chosen birthday as specified in the option: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg Q8(8) (regs Q8-Q17 added by SI 2008/654). A member's 'chosen birthday' must be either the member's 60th or 65th birthday: National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg Q8(9) (as so added).

10 Ie the benefits under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, Part E (see PARAS 723-725), Part L (see PARA 732) and Part S (see PARA 738) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three to six months under Part S, Part G (see PARAS 727-728) and Part H (see PARA 729)): reg Q8(1)(a) (as added: see note 9).

11 Ie under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, Part S (see PARA 738), Part G and Part H (see PARAS 727-729): reg Q8(1)(b) (as added: see note 9).

12 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs Q8, Q9 (both as added: see note 9).

13 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg Q10 (as added: see note 9).

14 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg Q11 (as added: see note 9). As to the meaning of 'employing authority' see PARA 717 note 3.

15 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs Q12-Q17 (all as added: see note 9).

## **UPDATE**

### **736 Rights to buy additional service, additional pension, and unreduced retirement lump sum**

NOTE 4--SI 1995/300 reg Q1 further amended: SI 2009/2446.

NOTE 7--SI 1995/300 reg Q2 further amended: SI 2009/2446.

NOTE 8--SI 1995/300 regs Q4-Q6 further amended: SI 2009/2446.

NOTE 12--SI 1995/300 reg Q9 amended: SI 2009/2446.

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## ***J. SPECIAL PROVISION***

### **737. Special provision for certain members.**

Special provision is made in relation to certain members<sup>1</sup>. This provision relates to members who are or have been practitioners or trainee practitioners<sup>2</sup>; nurses, physiotherapists, midwives or health visitors<sup>3</sup>; mental health officers<sup>4</sup>; members doing more than one job<sup>5</sup>; members in part-time employment<sup>6</sup>; members entitled to fees for domiciliary consultations<sup>7</sup>; members who work temporary additional sessions<sup>8</sup>; former members of health service schemes<sup>9</sup>; former members of the National Biological Standards Board pension scheme<sup>10</sup>; members whose earnings are reduced<sup>11</sup>; and members who die married under a law which permits polygamy<sup>12</sup>. Special provision is also made in respect of pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership<sup>13</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R1 (amended by SI 2002/2469; SI 2005/661; SI 2006/600; SI 2007/3280). See also *R (on the application of the British Medical Association) v Secretary of State for Health* [2008] All ER (D) 189 (Mar) (Secretary of State unable to retrospectively alter manner of determination of pension).

3 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R2 (amended by SI 2006/2919).

4 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R3 (amended by SI 2000/605; SI 2005/3074; SI 2006/2919; SI 2008/654).

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R4 (amended by SI 1998/666; SI 2006/2919; SI 2008/654).

6 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R5 (amended by SI 1997/1888; SI 2000/605; SI 2006/2919; SI 2007/3280; SI 2008/654).

7 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R6.

8 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R7.

9 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R8 (amended by SI 1998/666).

10 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R8A (added by SI 2007/2054).

11 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R9 (amended by SI 2008/654).

12 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R10.

13 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg R12 (added by SI 2001/1428; and amended by SI 2005/3074).

## **UPDATE**

### **737 Special provision for certain members**

NOTE 3--SI 1995/300 reg R2 further amended: SI 2009/2446.

NOTE 4--SI 1995/300 reg R3 further amended: SI 2009/2446.

NOTE 5--SI 1995/300 reg R4 further amended: SI 2009/2446.

NOTE 9--SI 1995/300 reg R8 further amended: SI 2009/2446.

NOTE 10--SI 1995/300 reg R8A further amended: SI 2009/2446.

NOTE 11--SI 1995/300 reg R9 further amended: SI 2009/2446.

NOTE 13--SI 1995/300 reg R12 further amended: SI 2009/2446.

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## ***K. RETURN TO NHS EMPLOYMENT***

### **738. Return to NHS employment after pension becomes payable.**

Special provision is made in relation to members<sup>1</sup> who return to NHS employment<sup>2</sup> after a pension becomes payable.

Where a pension is payable<sup>3</sup> to a member who, within one month<sup>4</sup> of the pension becoming payable, returns to NHS employment in which he is engaged for more than 16 hours per week, the pension ceases to be payable until the member either ceases to be in any NHS employment (or reduces the number of hours worked to 16 or less) for a period of one month or, if sooner, from the date of the member's 70th birthday if the pension becomes payable on or before 31 March 2008 or from the date of the member's 75th birthday if the pension becomes payable on or after 1 April 2008<sup>5</sup>. In certain circumstances the pension<sup>6</sup> of a member who continues in, or subsequently returns to, NHS employment may be reduced<sup>7</sup>.

Provision is made where a member in respect of whom an early retirement pension on grounds of ill-health<sup>8</sup>, or an ill health pension on early retirement<sup>9</sup>, is payable, subsequently returns to pensionable employment<sup>10</sup>; and also where a member in respect of whom such a pension is payable returns to pensionable employment and dies in pensionable employment<sup>11</sup>.

1 As to the meaning of 'member' see PARA 718 note 1.

2 As to the meaning of 'NHS employment' see PARA 717 note 3.

3 I.e. by virtue of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E1 (normal retirement pension: see PARA 723), reg E5 (early retirement pension with actuarial reduction: see PARA 723), or a preserved pension under reg L1 (see PARA 732).

4 As to the meaning of 'month' see PARA 28 note 16.

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg S1 (amended by SI 1998/666; SI 2000/605; SI 2007/3280; SI 2008/654).

6 I.e. a pension payable: (1) in respect of pensionable employment that ceased before 1 April 2008 under any of the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs E2-E3C (pensions on ill health retirement and redundancy: see PARA 724), or in accordance with reg L1(2)(b) (preserved pension: see PARA 732); or (2) in respect of pensionable employment that ceased on or after 1 April 2008 any of regs E2-E3, or in accordance with reg E3A(2)(d)(ii) (early retirement pension (termination of employment by employing authority): see PARA 724) or except where head (3) below applies, in accordance with reg L1(2)(b); or (3) where the member is a special class officer, reg E1 (normal retirement pension: see PARA 723), or if reg R2(3)(b) (nurses, physiotherapists, midwives and health visitors: see PARA 737) applies to the member, in accordance with L1(2)(b). As to the meaning of 'special class officer' see PARA 719 note 6.



7 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg S2 (amended by SI 1998/666; SI 2000/605; SI 2003/631; SI 2008/654).

8 Ie a pension under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E2: see PARA 724.

9 Ie a pension under the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg E2A: see PARA 724.

10 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs S3, S3A (added by SI 2008/654). As to the meaning of 'pensionable employment' see PARA 718 note 2.

11 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs S4, S4A (reg S4 amended by SI 2005/3074; SI 2007/3280; SI 2008/654; National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg S4A added by SI 2008/654).

## **UPDATE**

### **738 Return to NHS employment after pension becomes payable**

NOTE 5--SI 1995/300 reg S1 further amended: SI 2009/2446.

NOTE 7--SI 1995/300 reg S2 further amended: SI 2008/2263, SI 2009/2446.

NOTE 10--SI 1995/300 reg S3A amended: SI 2009/381.

NOTE 11--SI 1995/300 regs S4, S4A further amended: SI 2008/2263.

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## **L. ADMINISTRATION**

### **739. General and administrative provision.**

General provision is made as to the operation of the scheme<sup>1</sup>. The scheme administrator is the NHS Business Services Authority<sup>2</sup>. Provision is made as to the procedure for making claims for benefits<sup>3</sup>, the deduction of tax from any payments under the scheme<sup>4</sup>, the assignment of benefits<sup>5</sup>, the payment of benefits where a beneficiary is unable to look after his affairs<sup>6</sup>, the offset of benefits for crime, negligence or fraud<sup>7</sup>, the loss of rights to benefits<sup>8</sup>, the commutation of pensions of a trivial amount<sup>9</sup>, and interest on late payment of benefits<sup>10</sup>. Provision is also made in relation to persons detrimentally affected by the pension regulations<sup>11</sup>.

The Secretary of State<sup>12</sup> has powers to extend any time limits relating to the scheme<sup>13</sup>, to delegate certain of his functions relating to the health of a member to a medical practitioner<sup>14</sup>, and to determine any question arising as to the rights or liabilities of any person in relation to the scheme<sup>15</sup>. The Secretary of State must keep accounts of the scheme<sup>16</sup>, and provision is made as to cost sharing<sup>17</sup>.

Regulations have been made under the Pensions Act 1995<sup>18</sup> which make provision for the Secretary of State to provide information in certain circumstances in respect of individuals who have chosen to participate in a personal pension scheme<sup>19</sup> instead of the NHS pension scheme<sup>20</sup> and to make certain charges as specified in the Act<sup>21</sup>. The regulations describe the circumstances in which they apply<sup>22</sup>, prescribe the circumstances in which the Secretary of State may provide information to a prescribed person<sup>23</sup>, set out the 'prescribed persons'<sup>24</sup>, and prescribe the persons on whom the Secretary of State may impose reasonable fees in respect of administrative expenses<sup>25</sup>.

1 As to the meaning of 'scheme' see PARA 717 note 2.

2 National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg T2A(1) (reg T2A added by SI 2006/600). As to the NHS Business Services Authority see PARA 152.

3 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg T1 (substituted by virtue of SI 2007/3280).

4 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, regs T2, T2A (as added (see note 2); and amended by SI 2007/3280, SI 2008/654).

5 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg T3.

6 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg T4.

- 7 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg T5.
- 8 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg T6 (amended by SI 2003/631; SI 2005/3074).
- 9 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg T7 (amended by SI 2006/600; SI 2007/3280).
- 10 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg T8 (added by SI 2000/605; and amended by SI 2001/3649, SI 2007/3280).
- 11 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg V1.
- 12 As to the Secretary of State see PARA 6 note 8.
- 13 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg U1. The power to extend time limits applies to time limits which contain procedural or similar steps required to be taken; it does not extend to criteria which are of general application and are fundamental to the operation of the scheme such as provisions relating to the qualification of members for pension benefits: *Roy v National Health Service Pensions Agency* [2002] EWHC 3107 (Ch), [2003] OPLR 151, [2002] All ER (D) 64 (Dec).
- 14 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg U1A (added by SI 2004/665; and amended by SI 2005/3074, SI 2007/3280, SI 2008/654).
- 15 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg U2 (amended by SI 2007/3280).
- 16 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg U3 (amended by SI 2005/661; SI 2006/600; SI 2007/3280).
- 17 See the National Health Service Pension Scheme Regulations 1995, SI 1995/300, reg U4 (added by SI 2008/654).
- 18 Ie for the purposes of the Pensions Act 1995 s 172(1), (2): see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 876.
- 19 'Personal pension scheme' has the meaning given by the Pension Schemes Act 1993 s 1 (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 710) and includes: (1) a retirement annuity contract approved under the Income and Corporation Taxes Act 1988 Pt XIV Ch III; (2) a personal pension scheme approved under Pt XIV Ch IV of that Act; and (3) a retirement benefit scheme approved under s 591(2)(g): National Health Service Pension Scheme (Provision of Information and Administrative Expenses etc) Regulations 1996, SI 1996/2424, reg 2 (definition amended by SI 1997/80).
- 20 The NHS pension scheme is the scheme having effect under the National Health Service Pension Scheme Regulations 1995, SI 1995/300: see PARAS 717-738, and the text to notes 1-17.

21 See the National Health Service Pension Scheme (Provision of Information and Administrative Expenses etc) Regulations 1996, SI 1996/2424.

22 See the National Health Service Pension Scheme (Provision of Information and Administrative Expenses etc) Regulations 1996, SI 1996/2424, reg 3 (amended by SI 2001/3649).

23 See the National Health Service Pension Scheme (Provision of Information and Administrative Expenses etc) Regulations 1996, SI 1996/2424, reg 4 (amended by SI 1997/80).

24 See the National Health Service Pension Scheme (Provision of Information and Administrative Expenses etc) Regulations 1996, SI 1996/2424, reg 5 (amended by SI 2001/3649).

25 See the National Health Service Pension Scheme (Provision of Information and Administrative Expenses etc) Regulations 1996, SI 1996/2424, reg 6 (amended by SI 1997/80).

## **UPDATE**

### **739 General and administrative provision**

NOTE 3--SI 1995/300 reg T1 further substituted: SI 2008/2263.

NOTE 4--SI 1995/300 reg T2 further amended: SI 2009/2446.

NOTE 5--SI 1995/300 reg T3 amended: SI 2009/2446.

NOTE 8--SI 1995/300 reg T6 further amended: SI 2008/2263, SI 2009/2446. As to provision in relation to persons detrimentally affected by amendments to the pension regulations, see National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2008, SI 2008/2263, reg 93; National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2009, SI 2009/381, reg 89.

NOTE 9--SI 1995/300 reg T7 amended: SI 2009/2446.

NOTE 10--SI 1995/300 reg T8 further amended: SI 2008/2263, SI 2009/381.

NOTE 14--SI 1995/300 reg U1A further amended: SI 2008/2263, SI 2009/381.

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### **(iii) National Health Service Pension Scheme 2008**

#### **740. In general.**

The National Health Service Pension Scheme Regulations 2008<sup>1</sup> establish a new pension scheme for persons employed in the National Health Service on or after 1 April 2008, or in such employment immediately before that date but not members of the 1995 pension scheme<sup>2</sup> and wishing to join the new scheme. The scheme provides for benefits to be payable in relation to service as an officer<sup>3</sup>, and in relation to service as a practitioner or an out of hours provider<sup>4</sup>; and makes provision where a member has pensionable service under both types of service<sup>5</sup>. The scheme administrator is the NHS Business Services Authority<sup>6</sup>. A person who is entitled to a benefit under the scheme must give the scheme administrator certain information relevant for tax purposes<sup>7</sup>.

The Secretary of State<sup>8</sup> must keep accounts of all income and expenditure of the scheme<sup>9</sup> in a form approved by the Treasury<sup>10</sup>, which accounts must be open to examination by the Comptroller and Auditor General<sup>11</sup>. The scheme actuary must prepare an actuarial report of the scheme liabilities and benefits<sup>12</sup> at 31 March 2012 and at the expiration of every period of four years after that date<sup>13</sup>, and send a copy of that actuarial report of the scheme to the Secretary of State and the Treasury<sup>14</sup>.

1    Ie the National Health Service Pension Scheme Regulations 2008, SI 2008/653.

2    Ie the scheme contained in the National Health Service Pension Scheme Regulations 1995, SI 1995/300: see PARA 717 et seq.

3    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, Pt 2: and PARA 741. 'Officer' means a person (other than a practitioner) employed by an employing authority: see reg 2.A.1(1). 'Practitioner' means a registered medical practitioner or a dental practitioner providing services under the National Health Service: see reg 3.A.1(1).

4    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, Pt 3: and PARA 742.

5    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, Pt 4: and PARAS 741, 742.

6    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.J.1, 3.J.1. As to the NHS Business Services Authority see PARA 152.

7    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 1.B.3.

8    As to the Secretary of State see PARA 6 note 8.

9 The National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 1.B.1 applies to the National Health Service Pension Scheme as set out in the National Health Service Pension Scheme Regulations 2008, SI 2008/653 and the National Health Service Pension Scheme Regulations 1995, SI 1995/300: National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 1.B.1(1).

10 National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 1.B.1(2). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) paras 512-517.

11 National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 1.B.1(3). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

12 le under the National Health Service Pension Scheme Regulations 2008, SI 2008/653, and the National Health Service Pension Scheme Regulations 1995, SI 1995/300.

13 National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 1.B.1(4)(a). As to the matters which must be specified in the actuarial report see reg 1.B.2.

14 National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 1.B.1(4)(b).

## **UPDATE**

### **740-744 In general ... Injury benefits**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

### **740 In general**

NOTE 7--SI 2008/653 reg 1.B.3 amended: SI 2009/2446.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/ (iii) National Health Service Pension Scheme 2008/741. Benefits for officers.

#### **741. Benefits for officers.**

A person working in the National Health Service as an officer<sup>1</sup>, and who is not otherwise excluded from membership<sup>2</sup>, is eligible to be an active member of the 2008 pension scheme<sup>3</sup> if he: (1) is in NHS employment; (2) enters NHS employment on or after 1 April 2008, or entered NHS employment before that date and on that date was not an active member of the 1995 pension scheme<sup>4</sup> in that employment or any other NHS employment; (3) has not reached the age of 75; and (4) meets any one of the other scheme conditions<sup>5</sup>. With certain exceptions, a person will become a member of the scheme on entering employment unless he opts not to join the scheme<sup>6</sup>. Provision is made as to the reckoning of pensionable service<sup>7</sup> and qualifying service<sup>8</sup> and as to how service is calculated<sup>9</sup>, and as to the calculation of pensionable pay<sup>10</sup> and reckonable pay<sup>11</sup>.

Each active member must make contributions to the scheme<sup>12</sup> at the member's contribution rate for the period in question<sup>13</sup>; and each employing authority must contribute to the scheme, in respect of each person who is an active member of the scheme in an employment with the authority, at such a rate as the Secretary of State<sup>14</sup> specifies from time to time<sup>15</sup>. An active member may opt to make additional periodical contributions by monthly instalments or by lump sum<sup>16</sup>.

The general rule is that a member is entitled to a normal retirement pension payable for life in respect of any period of pensionable service if the member has reached the age of 65, and either has ceased to be employed in NHS employment and has claimed payment of the pension, or will reach the age of 75 on the next day<sup>17</sup>. Provision is also made for pensions for pension credit members<sup>18</sup>, late payment of pension with an actuarial increase<sup>19</sup>, early payment of pension with actuarial reduction<sup>20</sup>, and partial retirement<sup>21</sup>. Officers may qualify for early retirement on grounds of ill health<sup>22</sup> or on the termination of their employment on the grounds of efficiency or redundancy<sup>23</sup>. Members have the option to exchange their pension for a lump sum<sup>24</sup>, and may elect to allocate part of their pension to others<sup>25</sup>. Provision is made dealing with the effect of pension sharing on divorce or nullity<sup>26</sup>. Benefits are payable on the death of a member in the form of surviving adult dependants pensions<sup>27</sup> and surviving children's pensions<sup>28</sup>, and provision is also made for lump sums to be paid to nominees, adults to whom a pension is payable or personal representatives<sup>29</sup>.

Rights are granted to members to have a transfer payment paid by the scheme into another scheme<sup>30</sup>, and to have a transfer payment from another scheme accepted by the scheme so that the member is entitled to count further pensionable service in the scheme<sup>31</sup>. Additional provision is made as to the rights of members who rejoin the scheme after a break in qualifying employment<sup>32</sup>, the abatement of pensions<sup>33</sup>, and general administrative matters<sup>34</sup>.

1 As to the meaning of 'officer' see PARA 740 note 3. As to provision where a member has pensionable service as both an officer and as a practitioner or an out of hours provider see the National Health Service Pension Scheme Regulations 2008, SI 2008/653, Pt 4. As to benefits for practitioners and out of hours providers see PARA 742.

2 As to the exclusions see the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.B.2 (general restrictions on eligibility), 2.B.3 (concurrent employments) and 2.B.6 (restriction on further participation in the scheme).

3    Ie the scheme established under the National Health Service Pension Scheme Regulations 2008, SI 2008/653: see PARA 740.

4    Ie the scheme established under the National Health Service Pension Scheme Regulations 1995, SI 1995/300: see PARA 717 et seq.

5    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 2.B.1(1)-(4). As to the scheme conditions see reg 2.B.1(5), (6). As to the time at which a person attains a particular age see PARA 36 note 7.

6    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 2.B.4. As to opting out see reg 2.B.5.

7    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2A.2-2A.4.

8    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2A.5, 2A.6.

9    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 2A.7.

10   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2A.8, 2A.9.

11   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2A.10-2A.15.

12   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.C.1, 2.C.3, 2.C.4.

13   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 2.C.2. In certain circumstances a member's contributions may be repayable: see reg 2.C.18.

14   As to the Secretary of State see PARA 6 note 8.

15   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.C.5-2.C.7.

16   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.C.8-2.C.17. As to additional voluntary contributions see PARA 743.

17   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.D.1, 2.D.12, 2.D.13.

18   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 2.D.2.



- 19 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 2.D.3.
- 20 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 2.D.4.
- 21 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.D.5-2.D.7.
- 22 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.D.8, 2.D.9.
- 23 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 2.D.10.
- 24 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.D.14, 2.D.15.
- 25 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.D.18-2.D.20.
- 26 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.D.16, 2.D.17.
- 27 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.E.1-2.E.7.
- 28 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.E.8-2.E.15.
- 29 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.E.16-2.E.22.
- 30 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.F.1-2.F.7.
- 31 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.F.8-2.F.16.
- 32 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.G.1-2.G.6.
- 33 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.H.1-2.H.9.
- 34 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 2.J.1-2.J.14.

## **UPDATE**

### **740-744 In general ... Injury benefits**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

## 741 Benefits for officers

TEXT AND NOTES--SI 2008/653 regs 2.A.9, 2.C.2, 2.J.11 amended: SI 2008/2263, SI 2009/381. SI 2008/653 reg 2.B.2 amended: SI 2008/2263, SI 2009/381, SI 2009/1298. SI 2008/653 regs 2.F.9, 2.H.2, 2.H.5, 2.H.7, 2.J.2, 2.J.7 amended: SI 2008/2263. SI 2008/653 regs 2.D.2, 2.D.6, 2.D.7, 2.D.13, 2.D.15, 2.E.1, 2.E.7, 2.E.13, 2.E.15, 2.G.5, 2.J.5 amended: SI 2009/381. SI 2008/653 regs 2.3.20A (pension payable when member dies on or after reaching the age of 75) added: SI 2008/2263. SI 2008/653 regs 2.C.3, 2.C.4, 2.J.14 substituted: SI 2009/381. SI 2008/653 reg 2.D.17 revoked: SI 2009/381. SI 2008/653 regs 2.A.2, 2.A.4, 2.A.5, 2.B.1, 2.C.5, 2.D.10, 2.E.21, 2.F.6, 2.F.8, 2.F.10, 2.F.11, 2.J.9 amended: SI 2008/2263, SI 2009/2446. SI 2008/653 regs 2.A.10, 2.D.4, 2.D.5, 2.D.8, 2.D.11, 2.D.14, 2.E.3, 2.E.4, 2.E.7, 2.E.11, 2.E.12, 2.E.17-2.E.19 amended: SI 2009/381, SI 2009/2446. SI 2008/653 reg 2.B.1A added, regs 2.A.6-2.A.8, 2.A.12, 2.A.15, 2.B.3-2.B.6, 2.C.1, 2.C.8-2.C.11, 2.C.14, 2.C.16, 2.C.18, 2.D.1, 2.D.3, 2.D.12, 2.D.16, 2.D.18, 2.E.2, 2.E.6, 2.F.1, 2.F.2, 2.F.7, 2.F.12, 2.F.14, 2.F.15, 2.G.1, 2.G.3, 2.H.1, 2.H.4, 2.J.8, 2.J.10, 2.J.13 amended: SI 2009/2446. SI 2008/653 regs 2.D.9, 2.E.10 amended: SI 2008/2263, SI 2009/381, SI 2009/2446. SI 2008/653 regs 2.3.20A (pension payable when member dies on or after reaching the age of 75), 2.F.17 (transfers across from the NHS Pension Scheme 1995) added by SI 2008/2263 and amended by SI 2009/2446.

Provision is made in relation to persons who are active members of the section of the National Health Service Pension Scheme for England and Wales set out in the National Health Service Pension Scheme Regulations 1995, SI 1995/300 on or after 1 October 2009 and who opt to become members of the section of the National Health Service Pension Scheme for England and Wales set out in the National Health Service Pension Scheme Regulations 2008, SI 2008/653 on the basis set out in SI 2008/653 regs 2.K.1-2.K.24: see regs 2.K.1-2.K.24 (added by SI 2009/2446).

NOTE 1--SI 2008/653 Pt 4 amended: SI 2009/2446.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/ (iii) National Health Service Pension Scheme 2008/742. Benefits for practitioners.

## **742. Benefits for practitioners.**

A person who is a practitioner<sup>1</sup>, and who is not otherwise excluded from membership<sup>2</sup>, is eligible to be an active member of the 2008 pension scheme<sup>3</sup> if he enters practitioner service on or after 1 April 2008 and meets any one of the other scheme conditions<sup>4</sup>, or entered that service before that date and on that date was not an active member of the 1995 pension scheme<sup>5</sup> in that service or any other NHS employment, and has not reached the age of 75<sup>6</sup>. With certain exceptions, a person will become a member of the scheme on entering employment unless he opts not to join the scheme<sup>7</sup>. Provision is made as to the reckoning of pensionable service<sup>8</sup> and qualifying service<sup>9</sup>, and as to the calculation of pensionable earnings<sup>10</sup>.

Each active member must make contributions to the scheme in respect of the member's pensionable earnings<sup>11</sup> at the member's contribution rate for the period in question<sup>12</sup>; and each employing authority must contribute to the scheme, in respect of each person who is an active member of the scheme in an employment with the authority, at such a rate as the Secretary of State<sup>13</sup> specifies from time to time<sup>14</sup>. Members may purchase additional pension by paying extra contributions either by instalments over a period of up to 20 years or by lump sum<sup>15</sup>.

The general rule is that a member is entitled to a pension payable for life in respect of any period of pensionable service if he has reached the age of 65, and either has ceased to be employed in NHS employment and has claimed payment of the pension or will reach the age of 75 on the next day<sup>16</sup>. Provision is also made for pensions for pension credit members<sup>17</sup>, late payment of pension with an actuarial increase<sup>18</sup>, early payment of pension with actuarial reduction<sup>19</sup>, partial retirement<sup>20</sup>, and ill health pensions<sup>21</sup>. Members have the option to exchange pension for a lump sum<sup>22</sup>, and may elect to allocate part of their pension to others<sup>23</sup>. Provision is made dealing with the effect of pension sharing on divorce or nullity<sup>24</sup>. Benefits are payable on the death of a member in the form of surviving adult dependants pensions<sup>25</sup> and surviving children's pensions<sup>26</sup>, and provision is also made for lump sums to be paid to nominees, adults to whom a pension is payable or personal representatives<sup>27</sup>.

Rights are granted to members to have a transfer payment paid by the scheme into another scheme<sup>28</sup>, and to have a transfer payment from another scheme accepted by the scheme so that the member is entitled to count further pensionable service in the scheme<sup>29</sup>. Additional provision is made in respect of members who rejoin the scheme after a break in qualifying employment<sup>30</sup>, the abatement of pensions<sup>31</sup>, and general administrative matters<sup>32</sup>.

A body which provides or is to provide out of hours services and which wishes to be approved as an employing authority for the purposes of the scheme as it applies to practitioners, may make an application in that respect to a primary care trust<sup>33</sup> or local health board<sup>34</sup> appointed by the Secretary of State to act on his behalf<sup>35</sup>.

1 As to the meaning of 'practitioner' see PARA 740 note 3. As to provision where a member has pensionable service as both an officer and as a practitioner or an out of hours provider see the National Health Service Pension Scheme Regulations 2008, SI 2008/653, Pt 4. As to benefits for officers see PARA 741.

2 As to the exclusions see the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.B.2, 3.B.3, 3.B.6.

3    Is the scheme established under the National Health Service Pension Scheme Regulations 2008, SI 2008/653: see PARA 740.

4    As to the scheme conditions see the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 3.B.5.

5    Is the scheme established under the National Health Service Pension Scheme Regulations 1995, SI 1995/300: see PARA 717 et seq.

6    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 3.B.1. As to the time at which a person attains a particular age see PARA 36 note 7.

7    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.B.4-3.B.7.

8    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.A.3, 3.A.4.

9    See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.A.5, 3.A.6.

10   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.A.7-3.A.15.

11   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 3.C.1.

12   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.C.2, 3.C.16. As to additional voluntary contributions see PARA 743.

13   As to the Secretary of State see PARA 6 note 8.

14   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.C.3-3.C.5.

15   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.C.6-3.C.16.

16   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 3.D.1.

17   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 3.D.2.

18   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 3.D.3.

19   See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 3.D.4.

- 20 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.D.5, 3.D.6.
- 21 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.D.7-3.D.9.
- 22 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.D.10, 3.D.11.
- 23 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.D.14-3.D.16.
- 24 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.D.12, 3.D.13.
- 25 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.E.1-3.E.7.
- 26 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.E.8-3.E.15.
- 27 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.E.16-3.E.22.
- 28 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.F.1-3.F.7.
- 29 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.F.8-3.F.16.
- 30 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.G.1-3.G.5.
- 31 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.H.1-3.H.7.
- 32 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, regs 3.J.1-3.J.14.
- 33 As to primary care trusts see PARA 111.
- 34 As to local health boards see PARA 74.
- 35 See the National Health Service Pension Scheme Regulations 2008, SI 2008/653, reg 3.A.16.

## **UPDATE**

### **740-744 In general ... Injury benefits**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that

certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

## **742 Benefits for practitioners**

TEXT AND NOTES--SI 2008/653 regs 3.B.2, 3.D.6, 3.J.11 amended: SI 2008/2263, SI 2009/381. SI 2008/653 regs 3.A.4, 3.A.8, 3.B.5, 3.C.3, 3.J.7 amended: SI 2008/2263. SI 2008/653 regs 3.D.2, 3.D.11, 3.D.13, 3.E.1, 3.E.8, 3.E.13, 3.E.15, 3.G.5, 3.J.5 amended: SI 2009/381. SI 2008/653 reg 3.E.20A (pension payable when member dies on or after reaching the age of 75) added: SI 2008/2263. SI 2008/653 regs 3.H.2, 3.J.2 substituted: SI 2008/2263. SI 2008/653 reg 3.C.2 substituted: SI 2009/381. SI 2008/653 regs 3.A.3, 3.A.5, 3.A.7, 3.B.1, 3.D.9, 3.E.21, 3.F.6, 3.F.8, 3.F.9, 3.F.11 amended: SI 2008/2263, SI 2009/2446. SI 2008/653 reg 3.A.11 revoked, regs 3.A.6, 3.A.13, 3.A.16, 3.B.3, 3.B.4, 3.B.6, 3.B.7, 3.C.3, 3.C.5-3.C.8, 3.C.9, 3.C.12, 3.C.14-3.C.16, 3.D.1, 3.D.3, 3.D.12, 3.D.14, 3.E.2, 3.E.6, 3.F.1, 3.F.2, 3.F.4, 3.F.7, 3.F.12, 3.F.14-3.F.16, 3.G.1, 3.G.3, 3.G.4, 3.H.1, 3.H.2, 3.J.8, 3.J.13, 3.J.13 amended, reg 3.B.1A added, reg 3.F.10 substituted: SI 2009/2446. SI 2008/653 regs 3.D.4, 3.D.5, 3.D.7, 3.D.10, 3.E.3, 3.E.4, 3.E.7, 3.E.11, 3.E.12, 3.E.17-3.E.19 amended: SI 2009/381, SI 2009/2446. SI 2008/653 regs 3.D.8, 3.E.10, 3.J.9 amended: SI 2008/2263, SI 2009/381, SI 2009/2446. SI 2008/653 reg 3.J.14 substituted by SI 2009/381, amended by SI 2009/2446. SI 2008/653 reg 3.F.17 (transfers across from the NHS Pension Scheme 1995) added by SI 2008/2263, amended by SI 2009/2446.

Provision is made in relation to persons who are active members of the section of the National Health Service Pension Scheme for England and Wales set out in the National Health Service Pension Scheme Regulations 1995, SI 1995/300 on or after 1 October 2009 and who opt to become members of the section of the National Health Service Pension Scheme for England and Wales set out in the National Health Service Pension Scheme Regulations 2008, SI 2008/653 on the basis set out in SI 2008/653 regs 3.K.1-3.K.23: see regs 3.K.1-3.K.23 (added by SI 2009/2446).

NOTE 1--SI 2008/653 Pt 4 amended: see PARA 741.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/ (iv) Additional Voluntary Contributions/743. Additional voluntary contributions.

## **(iv) Additional Voluntary Contributions**

### **743. Additional voluntary contributions.**

Regulations make provision for the payment of additional voluntary contributions by persons who are members of the National Health Service pension scheme<sup>1</sup>, or by their employers, in order to secure additional benefits financed by investment of those contributions<sup>2</sup>. Detailed provision is made as to the making and acceptance of additional voluntary contributions<sup>3</sup>, their investment<sup>4</sup>, the making of transfers of the value of contributions made<sup>5</sup>, the payment of retirement and dependants' pensions<sup>6</sup> and of lump sums on death<sup>7</sup>, and limiting the amount of benefits<sup>8</sup>. Provision is also made as to various general and administrative matters<sup>9</sup>.

1    In the pension scheme constituted by the National Health Service Pension Scheme Regulations 1995, SI 1995/300 (see PARAS 717-739) or the National Health Service Pension Scheme Regulations 2008, SI 2008/653 (see PARAS 740-742).

2    See the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619.

3    See the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, regs 3-6 (regs 3-6 all amended by SI 2006/600, SI 2008/655; National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, reg 6 further amended by SI 2002/610).

4    See the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, reg 7 (amended by SI 2001/3649).

5    See the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, regs 8-10 (reg 8 amended by SI 2006/600; National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, reg 9 amended by SI 2008/655; National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, reg 10 substituted by SI 2002/610, and amended by SI 2006/600, SI 2008/655).

6    See the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, reg 11 (amended by SI 2001/3649; SI 2006/600; SI 2008/655).

7    See the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, reg 12 (amended by SI 2006/600).

8    See the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, reg 13 (substituted by SI 2006/600).

9 See the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000, SI 2000/619, regs 14-22 (regs 14, 15, 19, 20, 22, all amended by SI 2008/655).

## **UPDATE**

### **740-744 In general ... Injury benefits**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

### **743 Additional voluntary contributions**

NOTE 9--SI 2000/619 reg 20 amended: SI 2009/2446.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/(12) SUPERANNUATION AND OTHER BENEFITS/ (v) Injury Benefits/744. Injury benefits.

## **(v) Injury Benefits**

### **744. Injury benefits.**

The Secretary of State<sup>1</sup> must pay, in accordance with regulations, injury benefits to or in respect of any person engaged in the National Health Service in England and Wales<sup>2</sup> whose earning ability is reduced or who dies as a result of an injury suffered or a disease contracted in the course of his or her duties<sup>3</sup>.

The regulations apply to an injury which is sustained and to a disease which is contracted in the course of the person's employment and which is wholly or mainly attributable to his employment, and also to any other injury sustained and, similarly, to any other disease contracted, if:

- 488 (1) it is wholly or mainly attributable to the duties of his employment;
- 489 (2) it is sustained while, as a volunteer at an accident or emergency, he is providing health services which his professional training and code of conduct would require him to volunteer; or
- 490 (3) it is sustained while he is travelling as a passenger in a vehicle to or from his place of employment with the permission of the employing authority and if in addition (a) he was under no obligation to the employing authority to travel in the vehicle but, if he had been, the injury would have been sustained in the course of, and have been wholly or mainly attributable to, his employment; and (b) at the time of the injury the vehicle was being operated, otherwise than in the ordinary course of a public transport service, by or on behalf of the employing authority or by some other person by whom it was provided in pursuance of arrangements made with the authority<sup>4</sup>.

The regulations do not apply to a person: (i) in relation to any injury or disease wholly or mainly due to, or seriously aggravated by, his own culpable negligence or misconduct; (ii) eligible to participate in a superannuation scheme<sup>5</sup>. The regulations provide for a scale of benefits<sup>6</sup> and define 'service' for these purposes<sup>7</sup>.

If a person to whom the regulations apply dies as a result of, or his death was, in the opinion of the Secretary of State, substantially hastened by, the injury or disease, the Secretary of State must pay benefits in respect of that person except that such benefits are not payable in respect of an injury or disease wholly or mainly due to, or seriously aggravated by, the culpable negligence or misconduct of the deceased<sup>8</sup>. The benefits are a surviving partner's allowance<sup>9</sup>, a child's allowance<sup>10</sup>, a dependent relative's allowance<sup>11</sup>, and a lump sum on death<sup>12</sup>. In certain circumstances allowances may be restricted<sup>13</sup>, and incidental provision is made<sup>14</sup>.

Provision is made for allowances to be reviewed and varied in the light of changed circumstances<sup>15</sup>, for the loss of rights to benefit in limited circumstances<sup>16</sup>, for the offsetting of benefit in circumstances of crime, negligence or fraud<sup>17</sup>, for supplementary payment in respect of certain transferred officers<sup>18</sup>, for the taking into account of damages recovered by or in respect of the injured person<sup>19</sup>, for the avoidance of duplicate benefits<sup>20</sup>, for the procedure for making claims for benefits<sup>21</sup>, as to persons detrimentally affected by the regulations<sup>22</sup>, as to payments to personal representatives<sup>23</sup>, and for the determination of any question arising as to the rights or liabilities of a person to whom the regulations apply<sup>24</sup>.

The Secretary of State may require any person entitled, or claiming to be entitled, to an allowance to submit to a medical examination<sup>25</sup>, and may delegate his functions in relation to decisions as to the health of a claimant to a prescribed person<sup>26</sup>.

Any benefit to which a person becomes entitled is payable to, or in trust for, that person and is not assignable<sup>27</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the persons covered see the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 3(1) (amended by SI 1998/667; SI 1998/2217; SI 2000/606; SI 2004/865; SI 2004/1016; SI 2005/661; SI 2006/600; SI 2007/3280).

3 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866.

4 National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 3(2) (amended by SI 1998/667).

5 National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 3(3) (substituted by SI 2004/665). The superannuation scheme referred to is one established under the Superannuation Act 1972 s 1: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 567.

6 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 4 (amended by SI 1997/646; SI 2000/606; SI 2004/665; SI 2007/3280; SI 2008/655). For a case concerning the calculation of benefit see *R (on the application of Malekout) v Secretary of State for Health* [2005] EWCA Civ 1170, [2005] All ER (D) 98 (Oct).

7 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 5.

8 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 6.

9 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 7 (amended by SI 2005/3074; SI 2008/655).

10 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 8 (amended by SI 2005/3074; SI 2008/655).

11 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 9 (amended by SI 2005/3074; SI 2008/655).

12 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 11 (amended by SI 2005/3074; SI 2008/655).

13 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 10.

- 14 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 12 (amended by SI 2005/3074; SI 2008/655).
- 15 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 13.
- 16 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 14.
- 17 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 15.
- 18 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 16.
- 19 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 17.
- 20 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 18.
- 21 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 18A (added by SI 2004/665; and substituted by SI 2007/3280).
- 22 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 23.
- 23 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 21.
- 24 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 22 (amended by SI 2005/3074; SI 2007/3280).
- 25 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 19.
- 26 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 21A (added by SI 2004/665; and amended by SI 2007/3280).
- 27 See the National Health Service (Injury Benefits) Regulations 1995, SI 1995/866, reg 20.

## **UPDATE**

### **740-744 In general ... Injury benefits**

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009, SI 2009/2446, reg 106 provides that certain persons detrimentally affected by SI 2009/2446 may elect for the provisions not to apply to them.

### **744 Injury benefits**

TEXT AND NOTES--SI 1995/866 reg 21B (notification requirements) added: SI 2008/2263.

NOTE 3--SI 1995/866 reg 2 amended: SI 2009/2446.

NOTE 6--SI 1995/866 reg 4 further amended: SI 2008/2263, SI 2009/381. See also *NHS Business Services Authority v Ingram* [2009] EWHC 2486 (Ch), [2009] All ER (D) 162 (Oct).

NOTE 15--SI 1995/866 reg 13 amended: SI 2009/381.

NOTE 21--SI 1995/866 reg 18A amended: SI 2008/2263.

NOTE 22--As to provision for persons detrimentally affected by amendments to the pension regulations, see National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2008, SI 2008/2263, reg 93; National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2009, SI 2009/381, reg 89.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/ (13) NATIONAL HEALTH SERVICE AND PRIVATE PRACTICE/745. Incorporation of private practice.

### **(13) NATIONAL HEALTH SERVICE AND PRIVATE PRACTICE**

#### **745. Incorporation of private practice.**

The creation of the National Health Service in 1948<sup>1</sup> brought with it the incorporation in the newly created service of most of the then existing private practice of medicine. The great majority of specialists took up part time or full time posts in the new hospital service. Similarly, most general practitioners accepted contracts for the provision of general medical services<sup>2</sup>. Some doctors remained entirely outside the service, but all general practitioners and part-time hospital specialists within the service also retained the right to provide medical care for private patients<sup>3</sup>. So far as general practitioners are concerned, their link with the National Health Service is a contract for services<sup>4</sup>. They have an unqualified right to render such services also to private patients, and, where this is done, it is a matter entirely outside the scope of the National Health Service<sup>5</sup>.

However, for hospital doctors and dentists the case is different. In setting up the National Health Service hospital service, provision was made within the new service for beds for private patients, which were to be available on full repayment of the cost of accommodation and services provided<sup>6</sup>.

The provision of facilities for private practice enables patients who are eligible for National Health Service facilities, but who prefer to make private arrangements with a consultant, to use (at full cost) the comprehensive hospital facilities of the National Health Service<sup>7</sup>. These facilities also provide the opportunity to treat private patients from overseas and those from this country who might otherwise seek treatment abroad<sup>8</sup>. Patients who have chosen to be treated privately must pay charges designed to meet the full cost of the accommodation and services<sup>9</sup>.

The Secretary of State may authorise accommodation to be made available for use by patients who undertake to pay the prescribed charges<sup>10</sup>.

1 See PARA 1.

2 As to the provision of medical services today see PARA 241 et seq.

3 See *Private Practice in National Health Service Hospitals* (Cmnd 5270) (1972) para 5.

4 Whether the contract is entirely private in nature has been doubted: see *Roy v Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1 AC 624 at 630, [1992] 1 All ER 705 at 709, per Lord Bridge of Harwich; see also at 649 and 725 per Lord Lowry. See also *R v Secretary of State for Health, ex p Hickey* (1992) 10 BMLR 126, 136 Sol Jo LB 221.

5 However, general practitioners may not charge private fees for any services provided during an NHS consultation: see the National Health Service Act 2006 s 1(3); and PARA 10.

- 6 See *Private Practice in National Health Service Hospitals* (Cmnd 5270) (1972) para 6.
- 7 See the National Health Service Act 2006 s 267; and PARA 747.
- 8 See *Private Practice in National Health Service Hospitals* (Cmnd 5270) (1972) para 10.
- 9 See *Private Practice in National Health Service Hospitals* (Cmnd 5270) (1972) para 39.
- 10 See the National Health Service Act 2006 s 189; and PARA 746.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/ (13) NATIONAL HEALTH SERVICE AND PRIVATE PRACTICE/746. Hospital accommodation on part payment.

#### **746. Hospital accommodation on part payment.**

The Secretary of State<sup>1</sup> may authorise accommodation to be made available for patients<sup>2</sup> to such extent as he may determine<sup>3</sup>, and may recover such charges<sup>4</sup> as he may determine in respect of such accommodation and calculate them on any basis that he considers to be the appropriate commercial basis<sup>5</sup>. 'Accommodation' means: (1) accommodation in single rooms or small wards which is not needed by any patient on medical<sup>6</sup> grounds<sup>7</sup>; (2) accommodation at any health service hospital<sup>8</sup> or group of hospitals, or a hospital in which patients are treated under arrangements made by the Secretary of State<sup>9</sup>, or at the health service hospitals in a particular area or a hospital in which patients are so treated<sup>10</sup>.

A similar power is given to primary care trusts<sup>11</sup>, strategic health authorities<sup>12</sup>, NHS trusts<sup>13</sup> and special health authorities<sup>14</sup>. According to the nature of its functions, an NHS foundation trust may, in the case of patients being provided with goods and services for the purposes of the health service, make accommodation or further services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS foundation trust in respect of the accommodation or services<sup>15</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see PARA 6.

2 As to the meaning of 'patient' see PARA 15 note 6.

3 National Health Service Act 2006 s 189(1)(a). As to the equivalent provision to the National Health Service Act 2006 s 189 in relation to Wales see the National Health Service (Wales) Act 2006 s 137. As to the meaning of 'Wales' see PARA 6 note 2.

4 As to the recovery of charges see PARA 482.

5 National Health Service Act 2006 s 189(1)(b).

6 As to the meaning of 'medical' see para 10 note 5.

7 National Health Service Act 2006 s 189(2)(a).

8 References to a 'health service hospital' include references to such a hospital within the meaning of the National Health Service (Wales) Act 2006 s 206 (see PARA 21 note 7), but do not include references to a hospital vested in an NHS trust or an NHS foundation trust: National Health Service Act 2006 s 189(3). As to the meaning of 'health service hospital' generally see PARA 21 note 7. As to the meaning of 'hospital' see PARA 12 note 4. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174.

9     le by virtue of the National Health Service Act 2006 s 12: see PARA 17.

10    National Health Service Act 2006 s 189(2)(b).

11    See the National Health Service Act 2006 s 21(4); and PARA 129.

12    See the National Health Service Act 2006 Sch 2 para 15(1); and PARA 109.

13    See the National Health Service Act 2006 Sch 4 para 19; and PARA 169.

14    See the National Health Service Act 2006 Sch 6 para 11(1); and PARA 143.

15    See the National Health Service Act 2006 s 44(6); and PARA 206.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/1. THE NATIONAL HEALTH SERVICE/ (13) NATIONAL HEALTH SERVICE AND PRIVATE PRACTICE/747. Permission for use of facilities in private practice.

#### **747. Permission for use of facilities in private practice.**

The following provisions<sup>1</sup> apply to: (1) medical practitioners<sup>2</sup>, registered pharmacists<sup>3</sup> or other persons<sup>4</sup> who provide<sup>5</sup> pharmaceutical services<sup>6</sup>; (2) chiropodists who provide services under the National Health Service Act 2006 at premises where such pharmaceutical services are provided<sup>7</sup>; (3) persons providing primary medical services<sup>8</sup>, primary dental services<sup>9</sup> or primary ophthalmic services<sup>10</sup> under a general medical services contract<sup>11</sup>, a general dental services contract<sup>12</sup> or a general ophthalmic services contract<sup>13</sup>, or in accordance with arrangements<sup>14</sup> made by a strategic health authority<sup>15</sup>.

Such a person who wishes to use any relevant health service accommodation or facilities<sup>16</sup> for the purpose of providing medical<sup>17</sup>, dental, pharmaceutical, ophthalmic or chiropody services to non-resident private patients<sup>18</sup>, may apply in writing<sup>19</sup> to the Secretary of State<sup>20</sup> for permission<sup>21</sup>. Any application for permission must specify: (a) which of the relevant health service accommodation or facilities the applicant wishes to use for the purpose of providing services to such patients<sup>22</sup>; and (b) which of the kinds of services mentioned in heads (1) to (3) above he wishes the permission to cover<sup>23</sup>.

On receiving an application the Secretary of State: (i) must consider whether anything for which permission is sought would interfere with the giving of full and proper attention to persons seeking or afforded access otherwise than as private patients to any services provided under the National Health Service Act 2006<sup>24</sup>; and (ii) must grant the permission applied for unless in his opinion anything for which permission is sought would so interfere<sup>25</sup>. Any grant of permission is on such terms (including terms as to the payment of charges for the use of the relevant health service accommodation or facilities pursuant to the permission) as the Secretary of State may from time to time determine<sup>26</sup>.

Power is given to strategic health authorities<sup>27</sup> and special health authorities<sup>28</sup> to allow the use of accommodation or services for the treatment of private patients. An authorisation of an NHS foundation trust may restrict the extent to which that trust may provide private health care<sup>29</sup>.

The Secretary of State has power, in certain circumstances, to arrange to make supplies of human blood or body parts, or supplies of any other substances or preparations not readily obtainable, available (on such terms, including terms as to charges, as he considers appropriate) to any person<sup>30</sup>.

1    I.e. the National Health Service Act 2006 s 267. As to the equivalent provision to the National Health Service Act 2006 s 267 in relation to Wales see the National Health Service (Wales) Act 2006 s 198. As to the meaning of 'Wales' see PARA 6 note 2.

2    As to the meaning of 'medical practitioner' see PARA 84 note 7.

3    As to the meaning of 'registered pharmacist' see para 339 note 19.

4    As to the meaning of 'person' see para 17 note 2.

- 5    le under the National Health Service Act 2006 Pt 7 Ch 1 (ss 126-133): see PARA 339 et seq.
- 6    National Health Service Act 2006 s 267(5)(a). As to the meaning of 'pharmaceutical services' see PARA 339.
- 7    National Health Service Act 2006 s 267(5)(b).
- 8    As to primary medical services see PARA 241.
- 9    As to primary dental services see PARA 277.
- 10   As to primary ophthalmic services see PARA 328.
- 11   As to the meaning of 'general medical services contract' see PARA 242.
- 12   As to the meaning of 'general dental services contract' see para 278.
- 13   As to the meaning of 'general ophthalmic services contract' see para 330.
- 14   le arrangements made under the National Health Service Act 2006 s 92 (see para 267) or s 107 (see para 288).
- 15   National Health Service Act 2006 s 267(5)(c). As to strategic health authorities see PARA 94 et seq.
- 16   'Relevant health service accommodation or facilities', in relation to a person to whom the National Health Service Act 2006 s 267 applies, means: (1) any accommodation or facilities available at premises provided by the Secretary of State by virtue of the National Health Service Act 2006, being accommodation or facilities which that person is authorised to use for purposes of the Act (s 267(6)(a)); or (2) in the case of a person to whom s 267 applies by virtue of head (2) in the text, accommodation or facilities which that person is authorised to use for purposes of the Act at premises where services are provided under Pt 7 Ch 1 (ss 126-133) (s 267(6)(b)). As to the meaning of 'facilities' see para 12 note 7.
- 17   As to the meaning of 'medical' see para 10 note 5.
- 18   As to the meaning of 'patient' see para 15 note 6.
- 19   As to the meaning of 'writing' see para 7 note 2.
- 20   As to the Secretary of State see para 6 note 8. As to the territorial limit on the exercise of the functions of the Secretary of State see para 6. As to the delegation of these functions to strategic health authorities and primary care trusts see PARA 89.

- 21 National Health Service Act 2006 s 267(1).
- 22 National Health Service Act 2006 s 267(2)(a).
- 23 National Health Service Act 2006 s 267(2)(b).
- 24 National Health Service Act 2006 s 267(3)(a).
- 25 National Health Service Act 2006 s 267(3)(b).
- 26 National Health Service Act 2006 s 267(4).
- 27 See the National Health Service Act 2006 Sch 2 para 15(4); and PARA 109.
- 28 See the National Health Service Act 2006 Sch 6 para 11(4); and PARA 143.
- 29 See the National Health Service Act 2006 s 44; and PARA 206.
- 30 See the National Health Service Act 2006 s 255; and PARA 21.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(1) IN GENERAL/748. Meaning of 'independent hospital'.

## 2. REGISTRATION OF INDEPENDENT HEALTH SERVICES

### (1) IN GENERAL

#### 748. Meaning of 'independent hospital'.

A hospital which is not a health service hospital<sup>1</sup> is an 'independent hospital'<sup>2</sup>. Establishments<sup>3</sup> of the following descriptions are excepted from being independent hospitals<sup>4</sup>:

- 491 (1) an establishment which is a hospital<sup>5</sup> solely because its main purpose is to provide medical<sup>6</sup> or psychiatric treatment for illness<sup>7</sup> or mental disorder<sup>8</sup> but which provides no overnight beds for patients<sup>9</sup>;
- 492 (2) an establishment which is a service hospital within the meaning of the Armed Forces Act 1981<sup>10</sup>;
- 493 (3) an establishment which is, or forms part of, a prison, remand centre, young offender institution or secure training centre within the meaning of the Prison Act 1952<sup>11</sup>;
- 494 (4) an establishment which is an independent clinic<sup>12</sup>;
- 495 (5) an establishment (not being a health service hospital) which has as its sole or main purpose the performance by a general practitioner<sup>13</sup> of primary medical services; and such an establishment does not become an independent hospital as a result of the provision of listed services to a patient by such a general practitioner<sup>14</sup>;
- 496 (6) the private residence of a patient or patients in which treatment is provided to such patient or patients, but to no-one else<sup>15</sup>;
- 497 (7) sports grounds and gymnasia where health professionals provide treatment to persons taking part in sporting activities and events<sup>16</sup>; and
- 498 (8) a surgery or consulting room, not being part of a hospital, where a medical practitioner provides medical services solely under arrangements made on behalf of the patients by their employer or another person<sup>17</sup>.

'Hospital' (except in the expression health service hospital) means: (a) an establishment<sup>18</sup> the main purpose of which is to provide medical or psychiatric treatment for illness or mental disorder or palliative care<sup>19</sup>; or in which (whether or not other services are also provided) any of the listed services are provided<sup>20</sup>; (b) any other establishment in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983<sup>21</sup>.

'Listed services' means: (i) medical treatment under anaesthesia or sedation<sup>22</sup>; (ii) dental treatment under general anaesthesia<sup>23</sup>; (iii) obstetric services and, in connection with childbirth, medical services<sup>24</sup>; (iv) termination of pregnancies<sup>25</sup>; (v) cosmetic surgery other than ear and body piercing<sup>26</sup>, tattooing<sup>27</sup>, the subcutaneous injection of a substance or substances into the skin for cosmetic purposes<sup>28</sup>, and the removal of hair roots or small blemishes on the skin by the application of heat using an electric current<sup>29</sup>; (vi) treatment using prescribed<sup>30</sup> techniques or prescribed technology<sup>31</sup>.

Regulations may except any description of establishment from the definitions of 'independent hospital' and 'hospital'<sup>32</sup>, and modify the definition of 'listed services'<sup>33</sup>.

1 'Health service hospital' means a health service hospital within the meaning given by the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 (see PARA 21 note 7); Care Standards Act 2000 s 121(1) (definition amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 198, 200).

2 Care Standards Act 2000 s 2(1), (2). The Care Standards Act 2000 extends to England and Wales: s 123(2). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 In the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, 'establishment' means an independent hospital, including an independent hospital in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983, or an independent clinic: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1). 'Treatment' includes diagnosis (Care Standards Act 2000 s 121(1)); and includes palliative care and nursing and listed services (Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1)). As to the meaning of 'independent clinic' see PARA 749. As to the detention of persons under the Mental Health Act 1983 see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 436.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). Similar exceptions are prescribed in relation to Wales: see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 3(3) (amended by SI 2007/2332).

5 le by virtue of the Care Standards Act 2000 s 2(3)(a)(i): see the text to note 19.

6 'Medical' includes surgical: Care Standards Act 2000 s 121(1).

7 'Illness' includes any injury: Care Standards Act 2000 s 121(1).

8 'Mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind: Care Standards Act 2000 s 121(1). As from a day to be appointed there is substituted for this definition the following: 'mental disorder' has the same meaning as in the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402): s 121(1) (definition prospectively substituted by the Mental Health Act 2007 Sch 1 Pt 2 para 22). At the date at which this volume states the law no such day had been appointed.

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(3)(a). 'Patient', in relation to any establishment or independent medical agency, means a person for whom treatment is provided in or for the purposes of the establishment, or for the purposes of the agency: reg 2(1). As to the meaning of 'independent medical agency' see PARA 750.

10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(3)(b). As to the meaning of 'service hospital' see the Armed Forces Act 1981 s 13(9); and **ARMED FORCES** vol 2(2) (Reissue) PARA 31.

11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(3)(c). As to such establishments see **PRISONS**.

12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(3)(d).

13 'General practitioner' means a registered medical practitioner who: (1) performs primary medical services pursuant to the National Health Service Act 2006; or (2) performs services which correspond to primary medical services provided under that Act, otherwise than in pursuance of that Act: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1) (definition amended by SI 2004/865); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4. As to primary medical services see PARA 241.

14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(3)(e).

15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(3)(f).

16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(3)(g).

17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(3)(h). As to the meaning of 'person' see PARA 17 note 2.

18 In the Care Standards Act 2000: (1) any reference to a description of 'establishment' is a reference to, inter alia, an independent hospital, an independent hospital in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983, or an independent clinic; (2) a reference to any establishment is a reference to an establishment of any of those descriptions: see the Care Standards Act 2000 s 4(1), (8).

19 Care Standards Act 2000 s 2(3)(a)(i).

20 Care Standards Act 2000 s 2(3)(a)(ii).

21 Care Standards Act 2000 s 2(3)(b). References to a person liable to be detained under the Mental Health Act 1983 do not include a person absent in pursuance of leave granted under s 17 of that Act (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 506); Care Standards Act 2000 s 2(6). As to persons liable to be detained under the Mental Health Act 1983 see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 460 et seq.

22 Care Standards Act 2000 s 2(7)(a).

23 Care Standards Act 2000 s 2(7)(b).

24 Care Standards Act 2000 s 2(7)(c).

25 Care Standards Act 2000 s 2(7)(d).

26 Care Standards Act 2000 s 2(7)(e)(a)(i) (s 2(7)(e)(a) added by SI 2001/3968; SI 2002/325).

27 Care Standards Act 2000 s 2(7)(e)(a)(ii) (as added: see note 26).

28 Care Standards Act 2000 s 2(7)(e)(a)(iii) (as added: see note 26).

29 Care Standards Act 2000 s 2(7)(e)(a)(iv) (as added: see note 26).

30 'Prescribed' means prescribed by regulations: Care Standards Act 2000 s 121(1). As to the meaning of 'regulations' see PARA 753 note 4.

31 Care Standards Act 2000 s 2(7)(f). Certain additional treatment has been prescribed: in the case of England see the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(1), (2); and in the case of Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 3(1), (2).

32 Care Standards Act 2000 s 2(8)(a). As to such exceptions see the text to notes 3-17.

33 Care Standards Act 2000 s 2(8)(c). As to such modifications see the text to notes 26-29, and note 31.

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### 748 Meaning of 'independent hospital'

TEXT AND NOTES 1-17--SI 2001/3968 reg 3(3) further amended: SI 2008/2352.

TEXT AND NOTE 4--SI 2001/3968 reg 3 further amended: SI 2009/1892.

NOTE 31--SI 2002/325 reg 3(1) amended: SI 2009/1892.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(1) IN GENERAL/749. Meaning of 'independent clinic'.

#### **749. Meaning of 'independent clinic'.**

'Independent clinic' means an establishment<sup>1</sup> of a prescribed<sup>2</sup> kind (not being a hospital<sup>3</sup>) in which services are provided by medical<sup>4</sup> practitioners (whether or not any services are also provided for the purposes of the establishment elsewhere)<sup>5</sup>. However, an establishment in which, or for the purposes of which, services are provided by medical practitioners in pursuance of the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 is not an independent clinic<sup>6</sup>. Regulations may except any description of establishment from this definition<sup>7</sup>.

Establishments<sup>8</sup> of the following kinds are prescribed<sup>9</sup>: (1) a walk-in centre, in which one or more medical practitioners<sup>10</sup> provide services of a kind which, if provided in pursuance of the National Health Service Act 2006, would be provided as primary medical services<sup>11</sup>; and (2) a surgery or consulting room in which a medical practitioner who provides no services in pursuance of that Act provides medical services of any kind (including psychiatric treatment<sup>12</sup>) otherwise than under arrangements made on behalf of the patients<sup>13</sup> by their employer<sup>14</sup> or another person<sup>15</sup>. Where two or more medical practitioners use different parts of the same premises as a surgery or consulting room, or use the same surgery or consulting room at different times, each of the medical practitioners must be regarded as carrying on a separate independent clinic unless they are in practice together<sup>16</sup>.

1 As to the meaning of 'establishment' for these purposes see PARA 748 note 18.

2 'Prescribed' means prescribed by regulations: Care Standards Act 2000 s 121(1). As to the meaning of 'regulations' see PARA 753 note 4. As to the provision made see the text to notes 8-16.

3 As to the meaning of 'hospital' see PARA 748.

4 As to the meaning of 'medical' see PARA 748 note 6.

5 Care Standards Act 2000 s 2(4).

6 Care Standards Act 2000 s 2(4) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 198, 199).

7 Care Standards Act 2000 s 2(8)(a).

8 As to the meaning of 'establishment' for these purposes see PARA 748 note 3.



9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 4(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). Similar establishments are prescribed in relation to Wales: see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 4 (amended by SI 2007/2332). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

10 'Medical practitioner' means a registered medical practitioner: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1). As to the meaning of 'registered medical practitioner' see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 4(1)(a) (amended by SI 2004/865); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4). As to primary medical services see PARA 241.

12 As to the meaning of 'treatment' see PARA 748 note 3.

13 As to the meaning of 'patient' see PARA 748 note 9.

14 References to employing a person include employing a person whether under a contract of service or a contract for services, and references to an employee or to a person being employed must be construed accordingly: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(3). As to the meaning of 'person' see PARA 17 note 2. As to contracts of employment see **EMPLOYMENT** vol 39 (2009) PARA 1 et seq.

15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 4(1)(b); National Health Service (Consequential Provisions) Act 2006 Sch 2 Pt 1 para 1(4).

16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 4(2).

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### 749 Meaning of 'independent clinic'

NOTE 15--SI 2001/3968 reg 4(1)(b) substituted, reg 4(1)(1A) (application of reg 4(1)(b)) added: SI 2008/2352.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(1) IN GENERAL/750. Meaning of 'independent medical agency'.

### **750. Meaning of 'independent medical agency'.**

'Independent medical agency' means an undertaking<sup>1</sup> (not being an independent clinic<sup>2</sup> or an independent hospital<sup>3</sup>) which consists of or includes the provision of services by medical practitioners<sup>4</sup>. However, if any of the services are provided for the purposes of an independent clinic, or by medical practitioners in pursuance of the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, it is not an independent medical agency<sup>5</sup>. Regulations may except any description of undertaking from this definition<sup>6</sup>.

Any undertaking which consists of the provision of medical services by a medical practitioner<sup>7</sup> solely under arrangements made on behalf of the patients<sup>8</sup> by their employer<sup>9</sup> or another person is excepted from being an independent medical agency<sup>10</sup>.

1 'Undertaking' includes any business or profession and: (1) in relation to a public or local authority, includes the exercise of any functions of that authority; and (2) in relation to any other body of persons, whether corporate or unincorporate, includes any of the activities of that body: Care Standards Act 2000 s 121(1). As to the meaning of 'person' see PARA 17 note 2. 'Local authority' means, in relation to England, the council of a county, a metropolitan district, a London Borough or the Common Council of the City of London, and in relation to Wales, the council of a county or a county borough: Children Act 1989 s 105(1) (definition amended by the Local Government (Wales) Act 1994 ss 22(4), 66(8), Sch 10 para 13, Sch 18); definition applied by the Care Standards Act 2000 s 121(1). As to local government areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

2 As to the meaning of 'independent clinic' see PARA 749.

3 As to the meaning of 'independent hospital' see PARA 748.

4 Care Standards Act 2000 s 2(5) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 106).

5 Care Standards Act 2000 s 2(5) (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 198, 199).

6 Care Standards Act 2000 s 2(8)(b). As to the meaning of 'regulations' see PARA 753 note 4. As to the provision made see the text to notes 7-10.

7 As to the meaning of 'medical practitioner' see PARA 749 note 10.

8 As to the meaning of 'patient' see PARA 748 note 9.

9 As to the meaning of 'employer' see PARA 749 note 14.

10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 5. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). A similar exception is made in relation to Wales: see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 4A (added by SI 2006/1703; and amended by SI 2007/2332). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **750 Meaning of 'independent medical agency'**

TEXT AND NOTES 6-10--SI 2001/3968 reg 5 substituted: SI 2008/2352.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(1) IN GENERAL/751. Power to extend registration provisions.

### **751. Power to extend registration provisions.**

Regulations<sup>1</sup> may provide for the provisions relating to registration of independent health services<sup>2</sup> to apply, with such modifications as may be specified in the regulations, to prescribed<sup>3</sup> persons<sup>4</sup> of the following descriptions<sup>5</sup>:

- 499 (1) local authorities<sup>6</sup> providing services in the exercise of their social services functions<sup>7</sup>;
- 500 (2) persons who provide services which are similar to services which may or must be so provided by local authorities<sup>8</sup>, or may or must be provided by local health boards<sup>9</sup>, special health authorities<sup>10</sup>, NHS trusts<sup>11</sup>, NHS foundation trusts<sup>12</sup> or primary care trusts<sup>13</sup>;
- 501 (3) persons who carry on or manage an undertaking<sup>14</sup> (other than an establishment<sup>15</sup> or independent medical agency<sup>16</sup>) which consists of or includes supplying, or providing services for the purpose of supplying, individuals who provide services for the purpose of any of the services mentioned in heads (1) and (2) above<sup>17</sup>.

Such regulations made by the Secretary of State<sup>18</sup> may in particular specify whether, for the purposes of the application of registration provisions to any person, the registration authority<sup>19</sup> is to be the Commission for Healthcare Audit and Inspection<sup>20</sup>, the Commission for Social Care Inspection<sup>21</sup>, or Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>22</sup>.

1 As to the meaning of 'regulations' see PARA 753 note 4. At the date at which this volume states the law no such regulations relevant to this work had been made.

2 Ie the provisions of the Care Standards Act 2000 Pt II (ss 11-42): see PARA 759 et seq.

3 'Prescribed' means prescribed by regulations: Care Standards Act 2000 s 121(1).

4 As to the meaning of 'person' see PARA 17 note 2.

5 Care Standards Act 2000 s 42(1).

6 As to the meaning of 'local authority' see PARA 750 note 1.

7 Care Standards Act 2000 s 42(2)(a). 'Social services functions' means functions which are social services functions for the purposes of the Local Authority Social Services Act 1970 (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1006): Care Standards Act 2000 s 121(1).

- 8 Care Standards Act 2000 s 42(2)(b)(i).
- 9 As to local health boards see PARA 74.
- 10 As to the special health authorities see PARA 136.
- 11 As to NHS trusts see PARA 155.
- 12 As to NHS foundation trusts see PARA 174.
- 13 Care Standards Act 2000 s 42(2)(b)(ii) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 paras 110, 111; SI 2007/961). As to primary care trusts see PARA 111.
- 14 As to the meaning of 'undertaking' see PARA 750 note 1.
- 15 As to the meaning of 'establishment' see PARA 748 note 18. References to a 'person who carries on an establishment or independent medical agency' include references to a person who carries it on otherwise than for profit: Care Standards Act 2000 s 121(5).
- 16 As to the meaning of 'independent medical agency' see PARA 750.
- 17 Care Standards Act 2000 s 42(3), (4).
- 18 As to the Secretary of State see PARA 6 note 8.
- 19 As to the registration authority see PARA 755.
- 20 As to the Commission for Healthcare Audit and Inspection see PARA 552.
- 21 As to the Commission for Social Care Inspection see **SOCIAL SERVICES AND COMMUNITY CARE**.
- 22 Care Standards Act 2000 s 42(5) (added by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 paras 16, 25; and amended by Education and Inspections Act 2006 Sch 14 paras 38, 50). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 196; **EDUCATION**.

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission.

See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(1) IN GENERAL/752. Default powers of the Secretary of State.

## **752. Default powers of the Secretary of State.**

If the Secretary of State<sup>1</sup> is satisfied that the Commission for Healthcare Audit and Inspection<sup>2</sup>: (1) has without reasonable excuse failed to discharge, or properly to discharge, any of its functions under the Care Standards Act 2000<sup>3</sup>; or (2) in discharging any of those functions has without reasonable excuse failed to comply with any directions given by him in relation to those functions<sup>4</sup>; he may make an order<sup>5</sup> declaring the Commission to be in default<sup>6</sup> and direct the Commission to discharge such of its functions, and in such manner and within such period or periods, as may be specified in the direction<sup>7</sup>.

If the Commission fails to comply with the Secretary of State's direction, he may discharge the functions to which the direction relates himself<sup>8</sup>; or make arrangements for any other person<sup>9</sup> to discharge those functions on his behalf<sup>10</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 See the Care Standards Act 2000 s 113(1A)(a) (s 113(1A) added by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 paras 16, 29). As to the general duties of the Commission for Healthcare Audit and Inspection see PARA 756.

4 See the Care Standards Act 2000 s 113(1A)(b) (as added: see note 3).

5 As to the making of orders see PARA 753.

6 See the Care Standards Act 2000 s 113(3)(a).

7 See the Care Standards Act 2000 s 113(3)(b).

8 See the Care Standards Act 2000 s 113(4)(a).

9 As to the meaning of 'person' see PARA 17 note 2.

10 See the Care Standards Act 2000 s 113(4)(b).

## **UPDATE**

## **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

## **752 Default powers of the Secretary of State**

TEXT AND NOTES--Care Standards Act 2000 s 113(1A) repealed so as to remove the default powers of the Secretary of State under s 113: Health and Social Care Act 2008 Sch 5 para 30, Sch 15 Pt 1.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(1) IN GENERAL/753. Orders and regulations.

### **753. Orders and regulations.**

Any power conferred on the Secretary of State<sup>1</sup>, the Welsh Ministers<sup>2</sup> or the appropriate minister<sup>3</sup> to make regulations<sup>4</sup> or an order must be exercised by statutory instrument<sup>5</sup>. An instrument containing regulations or an order made by the Secretary of State, or the Secretary of State and the Welsh Ministers acting jointly, is subject to annulment in pursuance of a resolution of either House of Parliament<sup>6</sup>.

Any power of the Secretary of State, the Welsh Ministers, or the appropriate minister to make regulations or an order<sup>7</sup>:

- 502 (1) may be exercised either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case<sup>8</sup>;
- 503 (2) may be exercised so as to make, as respects the cases in relation to which it is exercised (a) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes<sup>9</sup>; (b) any such provision either unconditionally or subject to any specified condition<sup>10</sup>;
- 504 (3) may be exercised so as to make any supplementary, incidental or consequential provision<sup>11</sup>, and any transitory, transitional or saving provision<sup>12</sup>, which the person<sup>13</sup> exercising the power considers necessary or expedient<sup>14</sup>.

The appropriate minister may by order make any supplementary, incidental or consequential provision<sup>15</sup>, and any transitory, transitional or saving provision<sup>16</sup>, which he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of the Care Standards Act 2000<sup>17</sup>. Such provision includes provision amending or repealing any enactment<sup>18</sup> or instrument<sup>19</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 This provision originally referred to the National Assembly for Wales; the powers are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'Welsh Ministers' see PARA 6 note 6.

3 'Appropriate minister' means: (1) in relation to England, the Secretary of State; (2) in relation to Wales, the Welsh Ministers; and in relation to England and Wales means the Secretary of State and the Welsh Ministers acting jointly: Care Standards Act 2000 s 121(1); Government of Wales Act 2006 Sch 11 para 32. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 'Regulations' (except where provision is made for them to be made by the Secretary of State or the Welsh Ministers) means regulations made by the appropriate minister: Care Standards Act 2000 s 121(1).

5 See the Care Standards Act 2000 s 118(1). As to the bringing of subordinate legislation made by the Welsh Ministers before the National Assembly for Wales see the Government of Wales Act 2006 Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

6 See the Care Standards Act 2000 s 118(3); Government of Wales Act 2006 Sch 11 para 32. This provision is expressed to be subject to s 118(2): see note 19. As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

7 See the Care Standards Act 2000 s 118(4); Government of Wales Act 2006 Sch 11 para 32.

8 See the Care Standards Act 2000 s 118(5).

9 Care Standards Act 2000 s 118(6)(a).

10 Care Standards Act 2000 s 118(6)(b).

11 Care Standards Act 2000 s 118(7)(a).

12 Care Standards Act 2000 s 118(7)(b).

13 As to the meaning of 'person' see PARA 17 note 2.

14 Care Standards Act 2000 s 118(7).

15 Care Standards Act 2000 s 119(1)(a).

16 Care Standards Act 2000 s 119(1)(b).

17 Care Standards Act 2000 s 119(1).

18 As to the meaning of 'enactment' see PARA 10 note 7.

19 Care Standards Act 2000 s 119(2). An order making any such provision which adds to, replaces or omits any part of the text of an Act must not be made by the Secretary of State, or the Secretary of State and the Welsh Ministers acting jointly, unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament: see s 118(2), (3); Government of Wales Act 2006 Sch 11 para 32. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **753 Orders and regulations**

TEXT AND NOTES--Where a power to make regulations under the Care Standards Act 2000 is conferred on the Welsh Ministers other than by or by virtue of the Government of Wales Act 2006, the Care Standards Act 2000 s 118(1), (5)-(7) applies to the exercise of that power as it applies to the exercise of a power conferred on the Welsh Ministers by or by virtue of the Government of Wales Act 2006: Care Standards Act 2000 s 118A(1), (2) (s 118A added by the Health and Social Care Act 2008 Sch 5 para 32). A statutory instrument containing regulations made in the exercise of that power is subject to annulment in pursuance of a resolution of the National Assembly for Wales: Care Standards Act 2000 s 118A(3).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(1) IN GENERAL/754. Service of documents.

#### **754. Service of documents.**

Any notice or other document required<sup>1</sup> to be served on a person<sup>2</sup> carrying on<sup>3</sup> or managing, or intending to carry on or manage, an establishment or independent medical agency may be served on him by being delivered personally to him<sup>4</sup>, or by being sent by post<sup>5</sup> to him in a registered letter or by the recorded delivery service at his proper address<sup>6</sup>.

Any notice or other document required to be served on a body corporate or a firm is duly served if it is served on the secretary or clerk of that body or a partner of that firm<sup>7</sup>.

1    Ie under the Care Standards Act 2000 Pt II (ss 11-42).

2    As to the meaning of 'person' see PARA 17 note 2.

3    As to references to a 'person who carries on an establishment or independent medical agency' see PARA 751 note 15. As to the meaning of 'establishment' see PARA 748 note 18. As to the meaning of 'independent medical agency' see PARA 750.

4    Care Standards Act 2000 s 37(1)(a).

5    For the purposes of the Interpretation Act 1978 s 7 (which defines 'service by post': see PARA 27 note 7) a letter addressed to a person carrying on or managing an establishment or independent medical agency enclosing a notice or other document under the Care Standards Act 2000 is deemed to be properly addressed if it is addressed to him at the establishment or agency: s 37(2). For the purposes of s 37, and of the Interpretation Act 1978 s 7 in its application to the Care Standards Act 2000 s 37, without prejudice to s 37(2), the proper address of a person is: (1) in the case of a secretary or clerk of a body corporate, that of the registered or principal office of that body (s 37(5)(a)); (2) in the case of a partner of a firm, that of the principal office of the firm (s 37(5)(b)); and (3) in any other case, the last known address of the person (s 37(5)(c)).

6    Care Standards Act 2000 s 37(1)(b). Where a notice or other document is so served, the service is, unless the contrary is proved, deemed to have been effected on the third day after the day on which it is sent: s 37(3). References to sending by registered post include sending by recorded delivery service: see the Recorded Delivery Service Act 1962 s 1. A requirement to send a document by post is not limited to requiring it to be sent by the Post Office postal system: see the Postal Services Act 2000 s 127(4), Sch 8 Pt 1; and **POST OFFICE**.

7    Care Standards Act 2000 s 37(4).

#### **UPDATE**

#### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and

managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/755. Registration authority.

## **(2) REGISTRATION**

### **755. Registration authority.**

The registration authority for independent hospitals<sup>1</sup>, independent clinics<sup>2</sup> and independent medical agencies<sup>3</sup> in relation to England<sup>4</sup> is the Commission for Healthcare Audit and Inspection<sup>5</sup>; and in relation to Wales<sup>6</sup> is the Welsh Ministers<sup>7</sup>.

In making any decision the registration authority must take into account the national minimum standards published by the appropriate minister<sup>8</sup>.

1 As to the meaning of 'independent hospital' see PARA 748.

2 As to the meaning of 'independent clinic' see PARA 749.

3 As to the meaning of 'independent medical agency' see PARA 750.

4 As to the meaning of 'England' see PARA 6 note 2.

5 See the Care Standards Act 2000 s 5(1)(a)(i) (s 5(1) numbered as such by virtue of the Adoption and Children Act 2002 Sch 3 paras 103, 105; Care Standards Act 2000 s 5(1)(a)(i) substituted by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 paras 16, 17). As to the Commission for Healthcare Audit and Inspection see PARA 552. As to the general duties of the Commission for Healthcare Audit and Inspection see PARA 756.

6 As to the meaning of 'Wales' see PARA 6 note 2.

7 Care Standards Act 2000 s 5(1)(b) (as renumbered: see note 5); Government of Wales Act 2006 Sch 11 para 32. This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6. As to the general duties of the Welsh Ministers see PARA 757.

8 See the Care Standards Act 2000 s 23(4)(b); and PARA 768. As to the meaning of 'appropriate minister' see PARA 753 note 3.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and

managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **755 Registration authority**

TEXT AND NOTES--The Commission for Healthcare Audit and Inspection is dissolved: Health and Social Care Act 2008 s 1(2). Care Standards Act 2000 s 5 amended accordingly as from a day to be appointed: Health and Social Care Act 2008 Sch 5 para 6.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/756. General duties of Commission for Healthcare Audit and Inspection.

### **756. General duties of Commission for Healthcare Audit and Inspection.**

The Commission for Healthcare Audit and Inspection<sup>1</sup> has the general duty of: (1) keeping the Secretary of State<sup>2</sup> informed about the provision in England<sup>3</sup> of independent health services<sup>4</sup>, and in particular, the availability and quality of the services<sup>5</sup>; and (2) encouraging improvement in the quality of independent health services provided in England<sup>6</sup>.

The Commission must make information about independent health services provided in England available to the public<sup>7</sup>. When asked to do so by the Secretary of State, the Commission must give him advice or information on such matters relating to the provision in England of independent health services as may be specified in his request<sup>8</sup>. The Commission may at any time give advice to the Secretary of State on: (a) any changes which the Commission thinks should be made, for the purpose of securing improvement in the quality of independent health services provided in England, in the standards set out in statements<sup>9</sup> of national minimum standards<sup>10</sup>; (b) any other matter connected with the provision in England of such services<sup>11</sup>.

In the exercise of its functions<sup>12</sup> the Commission must have particular regard to the need to safeguard and promote the rights and welfare of children<sup>13</sup>. The Secretary of State may by regulations<sup>14</sup> confer additional functions on the Commission in relation to the provision in England of independent health services<sup>15</sup>.

1 As to the Commission for Healthcare Audit and Inspection see PARA 552.

2 As to the Secretary of State see PARA 6 note 8.

3 As to the meaning of 'England' see PARA 6 note 2.

4 Care Standards Act 2000 s 5A(1)(a) (s 5A added by the Health and Social Care (Community Health and Standards) Act 2003 s 103). 'Independent health services' means services of the kind provided by persons for whom the Commission is the registration authority (see PARA 755): Care Standards Act 2000 s 5A(8) (as so added). As to the meaning of 'person' see PARA 17 note 2.

5 Care Standards Act 2000 s 5A(1)(b) (as added: see note 4).

6 Care Standards Act 2000 s 5A(2) (as added: see note 4).

7 Care Standards Act 2000 s 5A(3) (as added: see note 4).

8 Care Standards Act 2000 s 5A(4) (as added: see note 4).



- 9    le under the Care Standards Act 2000 s 23: see PARA 768.
- 10   Care Standards Act 2000 s 5A(5)(a) (as added: see note 4).
- 11   Care Standards Act 2000 s 5A(5)(b) (as added: see note 4).
- 12   le under the Care Standards Act 2000.
- 13   Care Standards Act 2000 s 5A(6) (as added: see note 4). 'Child' means a person under the age of 18: s 121(1). As to the time at which a person attains a particular age see PARA 36 note 7.
- 14   As to the meaning of 'regulations' see PARA 753 note 4. At the date at which this volume states the law no such regulations had been made.
- 15   Care Standards Act 2000 s 5A(7) (as added: see note 4).

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **756 General duties of Commission for Healthcare Audit and Inspection**

TEXT AND NOTES--The Commission for Healthcare Audit and Inspection is dissolved: Health and Social Care Act 2008 s 1(2). Care Standards Act 2000 s 5A repealed: Health and Social Care Act 2008 Sch 5 para 7, Sch 15 Pt 1. See further PARA 552-592.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/757. General duties of the Welsh Ministers.

### **757. General duties of the Welsh Ministers.**

The Welsh Ministers<sup>1</sup> have the general duty of encouraging improvement in the quality of independent health services<sup>2</sup> provided in Wales<sup>3</sup>. The ministers must make information about those services provided in Wales available to the public<sup>4</sup>. The ministers have such additional functions in relation to those services provided in Wales as may be specified in regulations<sup>5</sup> made by them<sup>6</sup>, but the only functions which may be so specified in relation to a particular service are functions which are exercisable<sup>7</sup> by the Commission for Healthcare Audit and Inspection<sup>8</sup> in relation to the corresponding service provided in England<sup>9</sup>. In exercising these functions and those as registration authority<sup>10</sup>, the ministers must have particular regard to the need to safeguard and promote the rights and welfare of children<sup>11</sup>.

The ministers may charge a reasonable fee determined by them in connection with the exercise of any power conferred on them by or under the Care Standards Act 2000<sup>12</sup>. The ministers may provide training for the purpose of assisting persons to attain standards set out in any statements of national minimum standards published<sup>13</sup> by them<sup>14</sup>.

1 The functions under the Care Standards Act 2000 s 8 were originally vested in the National Assembly for Wales but are now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6.

2 'Independent health services' means services of the kind provided by independent hospitals, independent clinics and independent medical agencies, other than the provision of medical or psychiatric treatment, or listed services: see the Care Standards Act 2000 s 8(7) (added by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 paras 16, 18(1), (3); and re-numbered by the Education and Inspections Act 2006 Sch 14 paras 38, 40(1), (4)). As to the meaning of 'independent hospital' see PARA 748. As to the meaning of 'independent clinic' see PARA 749. As to the meaning of 'independent medical agency' see PARA 750. As to the meaning of 'medical' see PARA 748 note 6. As to the meaning of 'treatment' see PARA 748 note 3. As to the meaning of 'listed services' see PARA 748.

3 See the Care Standards Act 2000 s 8(1); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'Wales' see PARA 6 note 2.

4 See the Care Standards Act 2000 s 8(2); Government of Wales Act 2006 Sch 11 para 32.

5 As to the meaning of 'regulations' see PARA 753 note 4. At the date at which this volume states the law no such regulations had been made.

6 Care Standards Act 2000 s 8(3) (s 8(3) substituted, (3A) added, by the Education and Inspections Act 2006 Sch 14 paras 38, 40(1), (2)); Government of Wales Act 2006 Sch 11 para 32.

7 Ie by virtue of the Care Standards Act 2000 s 5A(7): see PARA 756.

8 Care Standards Act 2000 s 8(3A)(a) (as added: see note 6).

9 Care Standards Act 2000 s 8(3A) (as added: see note 6).

10 Ie those under the Care Standards Act 2000 s 5(1)(b): see PARA 755.

11 See the Care Standards Act 2000 s 8(6)(a) (added by the Health and Social Care (Community Health and Standards) Act 2003 s 109); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'child' see PARA 756 note 13.

12 Care Standards Act 2000 s 8(4); Government of Wales Act 2006 Sch 11 para 32.

13 Ie under the Care Standards Act 2000 s 23: see PARA 768.

14 Care Standards Act 2000 s 8(5); Government of Wales Act 2006 Sch 11 para 32.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **757 General duties of the Welsh Ministers**

NOTE 2--Care Standards Act 2000 s 8(7) amended: Health and Social Care Act 2008 Sch 5 para 8(4), Sch 15 Pt 1.

TEXT AND NOTES 7-9--Care Standards Act 2000 s 8(3A) substituted: Health and Social Care Act 2008 Sch 5 para 8(2).

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REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/758. Inquiries.

### **758. Inquiries.**

The appropriate minister<sup>1</sup> may cause an inquiry to be held into any matter connected with a service provided in or by an establishment<sup>2</sup> or independent medical agency<sup>3</sup>. Before an inquiry is begun, the person<sup>4</sup> causing the inquiry to be held may direct that it must be held in private<sup>5</sup>. Where no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private<sup>6</sup>. The report of the person who held the inquiry must, unless the minister who caused the inquiry to be held considers that there are exceptional circumstances which make it inappropriate to publish it, be published in a manner which that minister considers appropriate<sup>7</sup>.

1 As to the meaning of 'appropriate minister' see PARA 753 note 3.

2 As to the meaning of 'establishment' see PARA 748 note 18.

3 Care Standards Act 2000 s 10(2). As to the meaning of 'independent medical agency' see PARA 750. The Local Government Act 1972 s 250(2)-(5) (powers in relation to local inquiries: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) applies in relation to such an inquiry as it applies in relation to a local inquiry under that section; and references in that provision as so applied to a minister must be taken to include references to the Welsh Ministers: Care Standards Act 2000 s 10(5); Government of Wales Act 2006 Sch 11 para 32.

4 As to the meaning of 'person' see PARA 17 note 2.

5 Care Standards Act 2000 s 10(3).

6 Care Standards Act 2000 s 10(4).

7 Care Standards Act 2000 s 10(7).

### **UPDATE**

#### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/759. Requirement to register.

### **759. Requirement to register.**

Any person<sup>1</sup> who carries on or manages an establishment<sup>2</sup> or independent medical agency<sup>3</sup> of any description without being registered in respect of it (as an establishment or, as the case may be, independent medical agency of that description) is guilty of an offence<sup>4</sup>. Where the activities of an independent medical agency are carried on from two or more branches, each of those branches is treated as a separate agency for these purposes<sup>5</sup>.

The Secretary of State<sup>6</sup> may by regulations<sup>7</sup> make provision about the keeping of registers by the Commission for Healthcare Audit and Inspection<sup>8</sup> for the purposes of the registration provisions<sup>9</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the meaning of 'establishment' see PARA 748 note 18.

3 As to the meaning of 'independent medical agency' see PARA 750.

4 Care Standards Act 2000 s 11(1). A person guilty of such an offence is liable on summary conviction: (1) if s 11(6) does not apply, to a fine not exceeding level 5 on the standard scale (s 11(5)(a)); (2) if s 11(6) applies, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both (s 11(5)(b)). Section 11(6) applies if: (a) the person was registered in respect of the establishment or agency at a time before the commission of the offence but the registration was cancelled before the offence was committed (s 11(6)(a)); or (b) the conviction is a second or subsequent conviction of the offence and the earlier conviction, or one of the earlier convictions, was of an offence in relation to an establishment or agency of the same description (s 11(6)(b)). As to the standard scale see PARA 28 note 12.

5 Care Standards Act 2000 s 11(2).

6 As to the Secretary of State see PARA 6 note 8.

7 As to the meaning of 'regulations' see PARA 753 note 4.

8 As to the Commission for Healthcare Audit and Inspection see PARA 552.

9 Care Standards Act 2000 s 11(4) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 paras 16, 20). The registration provisions are those of the Care Standards Act 2000 Pt II (ss 11-42). Except in certain circumstances, the registration authority must secure that copies of any register are available at its offices for inspection at all reasonable times by any person (see s 36(1), (3)); and any person who asks the registration authority for a copy of, or of an extract from, a register is entitled to have one on payment of a fee (see s 36(2), (4)). As to the regulations made see the National Care Standards Commission (Registration) Regulations 2001, SI 2001/3969, reg 8.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **759 Requirement to register**

TEXT AND NOTES--Care Standards Act 2000 s 11(2) repealed, s 11(3), (4) amended to remove reference to the dissolved Commission for Healthcare Audit and Inspection: Health and Social Care Act 2008 Sch 5 para 10 (not yet in force).

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REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/760. Registration.

## **760. Registration.**

A person<sup>1</sup> seeking to be registered<sup>2</sup> must make an application to the registration authority<sup>3</sup>. A person who applies for registration as the manager of an establishment or independent medical agency must be an individual<sup>4</sup>. If the registration authority is satisfied that the statutory requirements<sup>5</sup> are being and will continue to be complied with (so far as applicable) in relation to the establishment or independent medical agency, it must grant the application; otherwise it must refuse it<sup>6</sup>. The application may be granted either unconditionally or subject to such conditions as the registration authority thinks fit<sup>7</sup>. On granting the application, the registration authority must issue a certificate of registration to the applicant<sup>8</sup>.

The registration authority may at any time cancel the registration of a person in respect of an establishment or independent medical agency: (1) on the ground that that person has been convicted of a relevant offence<sup>9</sup>; (2) on the ground that any other person has been convicted of such an offence in relation to the establishment or agency<sup>10</sup>; (3) on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements<sup>11</sup>; (4) on any ground specified by regulations<sup>12</sup>. A person who is registered may apply to the registration authority: (a) for the variation or removal of any condition for the time being in force in relation to the registration<sup>13</sup>; or (b) for the cancellation of the registration<sup>14</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the requirement to register see PARA 759.

3 Care Standards Act 2000 s 12(1). As to the registration authority see PARA 755. Regulations may make provision about the registration of persons in respect of establishments or independent medical agencies, and in particular about the making of applications for registration (s 16(1)(a)), and the contents of certificates of registration (s 16(1)(b)). As to the meaning of 'regulations' see PARA 753 note 4. As to the content of applications see s 12(2) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 105(1), (3)); the National Care Standards Commission (Registration) Regulations 2001, SI 2001/3969, regs 3-7. As to the meaning of 'establishment' see PARA 748 note 18. As to the meaning of 'independent medical agency' see PARA 750.

4 Care Standards Act 2000 s 12(3). A person who carries on or manages, or wishes to carry on or manage, more than one establishment or independent medical agency must make a separate application in respect of each of them: s 12(4). As to the appointment of managers see PARA 763. As to references to a 'person who carries on an establishment or independent medical agency' see PARA 751 note 15.

5 Ie the requirements of regulations under the Care Standards Act 2000 s 22 (see PARA 766) (s 13(2)(a)), and the requirements of any other enactment which appears to the registration authority to be relevant (s 13(2)(b)). As to the meaning of 'enactment' see PARA 10 note 7.

6 Care Standards Act 2000 s 13(1), (2). As to notice of proposals and decisions see PARA 761.

7 Care Standards Act 2000 s 13(1), (3). The registration authority may at any time: (1) vary or remove any condition for the time being in force in relation to a person's registration (s 13(1), (5)(a)); or (2) impose an additional condition (s 13(1), (5)(b)).

8 Care Standards Act 2000 s 13(1), (4). As to certificates of registration see the National Care Standards Commission (Registration) Regulations 2001, SI 2001/3969, regs 9-11. A certificate of registration issued in respect of any establishment or independent medical agency must be kept affixed in a conspicuous place in the establishment or at the agency: Care Standards Act 2000 s 28(1).

9 Care Standards Act 2000 s 14(1)(a). The following are 'relevant offences': an offence under Pt II (ss 11-42) or regulations made under it; an offence under the Registered Homes Act 1984 (repealed) or regulations made under it; an offence under the Children Act 1989 or regulations made under it (see **CHILDREN AND YOUNG PERSONS**); an offence under regulations under the Adoption (Intercountry Aspects) Act 1999 s 1(3) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 483); an offence under the Adoption and Children Act 2002 or regulations made under it (see **CHILDREN AND YOUNG PERSONS**): Care Standards Act 2000 s 14(2) (amended by the Adoption and Children Act 2002 Sch 3 paras 103, 107).

10 Care Standards Act 2000 s 14(1)(b).

11 Care Standards Act 2000 s 14(1)(c). 'Relevant requirements' means: (1) any requirements or conditions imposed by or under Pt II (ss 11-42) (s 14(3)(a)); (2) the requirements of any other enactment which appear to the registration authority to be relevant (s 14(3)(b)). As to cancellation on this ground see *Bamgbala v Commission for Social Care Inspection* [2008] EWHC 629 (Admin), [2008] All ER (D) 54 (Apr).

12 Care Standards Act 2000 s 14(1)(d). As to the specified grounds see the National Care Standards Commission (Registration) Regulations 2001, SI 2001/3969, reg 14.

13 Care Standards Act 2000 s 15(1)(a). If the registration authority decides to grant such an application it must serve notice in writing of its decision on the applicant (stating, where applicable, the condition as varied) and issue a new certificate of registration: s 15(4). As to the meaning of 'writing' see PARA 7 note 2. As to the service of notices and documents see PARA 754.

14 Care Standards Act 2000 s 15(1)(b). A person may not make an application under this provision: (1) if the registration authority has given him notice under s 17(4)(a) (see PARA 761) of a proposal to cancel the registration, unless the registration authority has decided not to take that step (s 15(2)(a)); or (2) if the registration authority has given him notice under s 19(3) (see PARA 761) of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not been determined (s 15(2)(b)). As to the making of applications see s 15(3), (5) (s 15(3) amended by the Health and Social Care (Community Health and Standards) Act 2003 s 105(1), (4); Care Standards Act 2000 s 15(5) amended by the Health and Social Care (Community Health and Standards) Act 2003 s 105(1), (5)); National Care Standards Commission (Registration) Regulations 2001, SI 2001/3969, reg 15.

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.



## 760 Registration

NOTE 3--Care Standards Act 2000 s 12(2) further amended: Health and Social Care Act 2008 Sch 5 para 11 (in force in relation to England (SI 2009/2862); in force 1 October 2010 in relation to Wales (SI 2010/807)).

TEXT AND NOTES 9-12--Also, head (5) on the ground that a notice under the Care Standards Act 2000 s 22A relating to the establishment or agency has been served on that person or any other person, and the person on whom the notice was served has failed to take the steps specified in it within the period so specified: s 14(1)(ca) (added by Children and Young Persons Act 2008 s 26(1)).

TEXT AND NOTES 9-14--The Welsh Ministers may at any time suspend for a specified period the registration of a person in respect of an establishment or agency for which the Welsh Ministers are the registration authority: see the Care Standards Act 2000 s 14A (added by Health and Social Care Act 2008 Sch 5 para 13 (in force for certain purposes: SI 2009/462)).

NOTE 9--An offence under the Health and Social Care Act 2008 Pt 1 (ss 1-97) or regulations made under those provisions is also a 'relevant offence' for these purposes: Care Standards Act 2000 s 14(2) (amended by Health and Social Care Act 2008 Sch 5 para 12 (in force 1 October 2010: SI 2010/807)).

TEXT AND NOTES 13, 14--Or head (c) for the cancellation of, or the variation of the period of, any suspension of the registration: Care Standards Act 2000 s 15(1)(c) (added by Health and Social Care Act 2008 Sch 5 para 14(a)). Care Standards Act 2000 s 15(3) further amended, s 14(4A) added: Health and Social Care Act 2008 Sch 5 para 14(b), (c). Care Standards Act 2000 s 15(5) substituted: Health and Social Care Act 2008 Sch 5 para 14(d) (in force 1 October 2010: SI 2010/807).

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### **761. Registration procedure.**

Where a person<sup>1</sup> applies for registration in respect of an establishment<sup>2</sup> or independent medical agency<sup>3</sup>: (1) if the registration authority<sup>4</sup> proposes to grant the application subject to any conditions which have not been agreed in writing<sup>5</sup> between it and the applicant, it must give the applicant written notice of its proposal and of the conditions subject to which it proposes to grant his application<sup>6</sup>; (2) the registration authority must give the applicant notice of a proposal to refuse the application<sup>7</sup>. Except where it makes an application for urgent action<sup>8</sup>, the registration authority must give any person registered in respect of an establishment or independent medical agency notice of a proposal: (a) to cancel the registration (otherwise than in accordance with an application by the registered person himself)<sup>9</sup>; (b) to vary or remove (otherwise than in accordance with an application by the registered person himself) any condition for the time being in force in relation to the registration<sup>10</sup>; or (c) to impose any additional condition in relation to the registration<sup>11</sup>. The registration authority must give the applicant notice of a proposal to refuse an application by him for the variation or removal of conditions<sup>12</sup>.

Any such notice must give the registration authority's reasons for its proposal<sup>13</sup>, and must state that within 28 days of service of the notice any person on whom it is served may make written representations to the registration authority concerning any matter which that person wishes to dispute<sup>14</sup>. Where a notice has been served, the registration authority must not determine any matter to which the notice relates until either any person on whom the notice was served has made written representations to it concerning the matter<sup>15</sup>, any such person has notified the registration authority in writing that he does not intend to make representations<sup>16</sup>, or the period during which any such person could have made representations has elapsed<sup>17</sup>.

If the registration authority decides to grant an application for registration in respect of an establishment or independent medical agency unconditionally, or subject only to conditions which have been agreed in writing between it and the applicant, it must give the applicant written notice of its decision<sup>18</sup> stating the agreed conditions<sup>19</sup>. If the registration authority decides to adopt a proposal<sup>20</sup>, it must serve notice in writing of its decision on any person on whom it was required to serve notice of the proposal<sup>21</sup>. A decision of the registration authority to adopt a proposal<sup>22</sup> does not take effect, if no appeal is brought, until the expiration of the period of 28 days for the bringing of the appeal<sup>23</sup>; and if an appeal is brought, until it is determined or abandoned<sup>24</sup>.

If the registration authority applies to a justice of the peace<sup>25</sup> for an order<sup>26</sup>: (i) cancelling the registration of a person in respect of an establishment or independent medical agency<sup>27</sup>; (ii) varying or removing any condition for the time being in force<sup>28</sup>; or (iii) imposing an additional condition<sup>29</sup>, and it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being<sup>30</sup>, the justice may make the order, and the cancellation, variation, removal or imposition has effect from the time when the order is made<sup>31</sup>. Where such an order is made, the registration authority must, as soon as practicable after the making of the order, serve on the person registered in respect of the establishment or independent medical agency a copy of the order<sup>32</sup>, and notice of the right of appeal<sup>33</sup>.

An appeal against a decision of the registration authority<sup>34</sup>, or an order made by a justice of the peace<sup>35</sup>, lies to the tribunal<sup>36</sup>. No appeal against a decision or order may be brought by a person more than 28 days after service on him of notice of the decision or order<sup>37</sup>. On an appeal against a decision of the registration authority the tribunal may confirm the decision or

direct that it is not to have effect<sup>38</sup>. On an appeal against an order made by a justice of the peace the tribunal may confirm the order or direct that it is to cease to have effect<sup>39</sup>. The Tribunal also has power on an appeal against a decision or order: (A) to vary any condition for the time being in force in respect of the establishment or independent medical agency to which the appeal relates<sup>40</sup>; (B) to direct that any such condition is to cease to have effect<sup>41</sup>; or (C) to direct that any such condition as it thinks fit has effect in respect of the establishment or independent medical agency<sup>42</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the meaning of 'establishment' see PARA 748 note 18.

3 Care Standards Act 2000 s 17(1). As to the meaning of 'independent medical agency' see PARA 750. As to applications for registration see PARA 760.

4 As to the registration authority see PARA 755.

5 As to the meaning of 'writing' see PARA 7 note 2.

6 Care Standards Act 2000 s 17(2)(a). As to the service of notices and documents see PARA 754.

7 Care Standards Act 2000 s 17(2)(b).

8 Is an application under the Care Standards Act 2000 s 20: see the text to notes 25-33.

9 Care Standards Act 2000 s 17(3)(a). As to applications by a registered person for cancellation of registration or variation or removal of conditions see PARA 760.

10 Care Standards Act 2000 s 17(3)(b).

11 Care Standards Act 2000 s 17(3)(c).

12 Care Standards Act 2000 s 17(4).

13 Care Standards Act 2000 s 17(5).

14 Care Standards Act 2000 s 18(1).

15 Care Standards Act 2000 s 18(2)(a).

16 Care Standards Act 2000 s 18(2)(b).

17 Care Standards Act 2000 s 18(2)(c).

18 Care Standards Act 2000 s 19(1).

19 Care Standards Act 2000 s 19(2).

20 le under the Care Standards Act 2000 s 17: see the text to notes 1-13.

21 Care Standards Act 2000 s 19(3). Such a notice must: (1) explain the right of appeal conferred by s 21 (see the text to notes 34-37) (s 19(4)(a)); (2) in the case of a decision to adopt a proposal under s 17(2) (see the text to notes 4-7), state the conditions subject to which the application is granted (s 19(4)(b)); and (3) in the case of a decision to adopt a proposal under s 17(4)(b) or (c) (see the text to note 12), state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed (s 19(4)(c)).

22 le under the Care Standards Act 2000 s 17(2) or (4): see the text to notes 4-7, 12.

23 Care Standards Act 2000 s 19(5)(a). Where, in the case of a decision to adopt a proposal under s 17(2) (see the text to notes 4-7), the applicant notifies the registration authority in writing before the expiration of such period that he does not intend to appeal, the decision takes effect when the notice is served: s 19(6).

24 Care Standards Act 2000 s 19(5)(b).

25 As to justices of the peace see **MAGISTRATES** vol 29(2) (Reissue) PARA 501 et seq.

26 An application may, if the justice thinks fit, be made without notice: Care Standards Act 2000 s 20(2). As soon as practicable after the making of an application, the registration authority must notify the appropriate authorities of the making of the application: s 20(3). The 'appropriate authorities' are: (1) the local authority in whose area the establishment or independent medical agency is situated (s 20(6)(a)); (2) the primary care trust or local health board in whose area the establishment or independent medical agency is situated (s 20(6)(b) (amended by the National Health Service Reform and Health Care Professions Act 2002 Sch 2 Pt 2 para 70; SI 2007/961)); and (3) any statutory authority not falling within head (1) or (2) above whom the registration authority thinks it appropriate to notify (Care Standards Act 2000 s 20(6)(c)). 'Statutory authority' means a body established by or under an Act of Parliament: s 20(7). As to the meaning of 'local authority' see PARA 750 note 1. As to primary care trusts see PARA 111. As to local health boards see PARA 74.

27 Care Standards Act 2000 s 20(1)(a)(i).

28 Care Standards Act 2000 s 20(1)(a)(ii).

29 Care Standards Act 2000 s 20(1)(a)(iii).

30 Care Standards Act 2000 s 20(1)(b).

31 Care Standards Act 2000 s 20(1). An order must be in writing: s 20(4). In any proceedings for such an order the national minimum standards published under s 23 must be taken into account: see s 23(4)(b); and PARA 768.

32 Care Standards Act 2000 s 20(5)(a).

33 Care Standards Act 2000 s 20(5)(b).

34 Care Standards Act 2000 s 21(1)(a).

35 Care Standards Act 2000 s 21(1)(b).

36 Care Standards Act 2000 s 21(1). 'Tribunal' means the tribunal established under the Protection of Children Act 1999 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 708): Care Standards Act 2000 s 121(13). On any appeal the national minimum standards published under s 23 must be taken into account: see s 23(4)(c); and PARA 768.

37 Care Standards Act 2000 s 21(2).

38 Care Standards Act 2000 s 21(3).

39 Care Standards Act 2000 s 21(4).

40 Care Standards Act 2000 s 21(5)(a).

41 Care Standards Act 2000 s 21(5)(b).

42 Care Standards Act 2000 s 21(5)(c).

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **761 Registration procedure**

TEXT AND NOTES 12, 13--Care Standards Act 2000 s 17(4), (5) amended: Health and Social Care Act 2008 Sch 5 para 16.

NOTE 21--Care Standards Act 2000 s 19(4)(ba) added: Health and Social Care Act 2008 Sch 5 para 17.

TEXT AND NOTES 25-33--As from 1 October 2010, Care Standards Act 2000 s 20 (amended by Health and Social Care Act 2008 Sch 5 para 18) applies only in relation to England and only where Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority. As to the urgent procedure for cancellation, suspension or variation in Wales, see the Care Standards Act 2000 ss 20A, 20B (added by Health and Social Care Act 2008 Sch 5 para 19 (in force 1 October 2010: SI 2010/807)).

TEXT AND NOTES 34-42--Care Standards Act 2000 s 21(1)(b), (3), (5) amended, s 21(4ZA), (6) added: Health and Social Care Act 2008 Sch 5 para 20, Sch 15 Pt 1 (Sch 5 para 20 all in force by 1 October 2010: SI 2009/462, SI 2010/807).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/762. Fitness of registered provider.

## **762. Fitness of registered provider.**

A person<sup>1</sup> must not carry on an establishment<sup>2</sup> or independent medical agency<sup>3</sup> unless he is fit to do so<sup>4</sup>. A person is not fit to carry on an establishment or independent medical agency unless the person:

- 505 (1) is an individual, who carries on the establishment or agency: (a) otherwise than in partnership with others, and he satisfies the prescribed requirements<sup>5</sup>; (b) in partnership with others, and he and each of his partners satisfies those requirements<sup>6</sup>;
- 506 (2) is a partnership, and each of the partners satisfies the prescribed requirements<sup>7</sup>;
- 507 (3) is an organisation<sup>8</sup> and: (a) the organisation has given notice to the Commission for Healthcare Audit and Inspection<sup>9</sup> of the name, address and position in the organisation of an individual (known as the 'responsible individual') who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the establishment or agency<sup>10</sup>; and (b) that individual satisfies the prescribed requirements<sup>11</sup>.

The prescribed requirements are that: (i) he is of integrity and good character<sup>12</sup>; (ii) he is physically and mentally fit to carry on the establishment or independent medical agency<sup>13</sup>; and (iii) full and satisfactory information is available in relation to him in respect of each of the specified matters<sup>14</sup>.

A person must not carry on an establishment or independent medical agency if: (A) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded<sup>15</sup>; or (B) he has made a composition or arrangement with his creditors and has not been discharged in respect of it<sup>16</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the meaning of 'establishment' see PARA 748 note 3. As to references to a 'person who carries on an establishment or independent medical agency' see PARA 751 note 15.

3 As to the meaning of 'independent medical agency' see PARA 750.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 10 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 9 (amended by SI 2002/2622). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

- 5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(2)(a)(i).
- 6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(2)(a)(ii).
- 7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(2)(b).
- 8 'Organisation' means a body corporate or any unincorporated association other than a partnership: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1). As to corporations and unincorporated associations see **CORPORATIONS** vol 9(2) (Reissue) PARA 1001.
- 9 As to the Commission for Healthcare Audit and Inspection see PARA 552.
- 10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(2)(c)(i).
- 11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(2)(c)(ii).
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(3)(a).
- 13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(3)(b).
- 14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(3)(c) (reg 10(3)(c), Sch 2 amended by SI 2002/865). The 'specified matters' are: (1) positive proof of identity including a recent photograph; (2) either (a) where the certificate is required for a purpose relating to the Police Act 1997 s 115(5) (ea) (repealed), or the position falls within s 115(3) or (4) (repealed) of that Act, an enhanced criminal record certificate issued under s 115 (repealed) of that Act; or (b) in any other case, a criminal record certificate issued under s 113 (repealed) of that Act; including, where applicable, the matters specified in ss 113(3A) and 115(6A) (both repealed) of that Act and the following provisions once they are in force, namely s 113(3C)(a) and (b) (repealed) and s 115(6B)(a) and (b) (repealed) of that Act; (3) two written references, being references from the person's most recent employers, if any; (4) where a person has previously worked in a position which involved work with children or vulnerable adults, verification, so far as reasonably practicable, of the reason why he ceased to work in that position; (5) documentary evidence of any relevant qualifications; (6) a full employment history, together with a satisfactory written explanation of any gaps in employment; (7) where he is a health care professional, details of his registration with the body (if any) responsible for regulation of members of the health care profession in question: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 2 (as so amended). As to the meaning of 'child' see PARA 756 note 13. As to the provisions now in force in relation to criminal record certificates and enhanced criminal record certificates see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 712 et seq. 'Health care professional' means a person who is registered as a member of any profession to which the Health Act 1999 s 60(2) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 291) applies, or who is a clinical psychologist or child psychotherapist; and 'health care profession' must be construed accordingly: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1).
- 15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(5)(a). As to bankruptcy and arrangements and compositions with creditors see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.
- 16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 10(5)(b).

## UPDATE

### 748-804 Registration of independent health services



As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

## **762 Fitness of registered provider**

NOTE 4--SI 2002/325 reg 9 further amended: SI 2009/2541.

NOTE 14--Reference to 'clinical psychologist' omitted from definition of 'health care professional': SI 2001/3968 reg 2(1) (amended by SI 2009/1182). SI 2001/3968 Sch 2 further amended: SI 2009/1895.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/763. Appointment of manager.

### **763. Appointment of manager.**

The registered provider<sup>1</sup> must appoint an individual to manage an establishment or independent medical agency if: (1) there is no registered manager<sup>2</sup> in respect of the establishment or agency<sup>3</sup>; and (2) the registered provider is an organisation<sup>4</sup> or a partnership<sup>5</sup>, is not a fit person to manage an establishment or agency<sup>6</sup>, or is not, or does not intend to be, in full-time day to day charge of the establishment or agency<sup>7</sup>. Where the registered provider appoints a person to manage the establishment or independent medical agency, he must forthwith give notice to the Commission for Healthcare Audit and Inspection<sup>8</sup> of the name of the person so appointed<sup>9</sup> and the date on which the appointment is to take effect<sup>10</sup>.

A person must not manage an establishment or independent medical agency unless he is fit to do so<sup>11</sup>. A person is not fit to manage an establishment or independent medical agency unless:

- 508 (a) he is of integrity and good character<sup>12</sup>;
- 509 (b) having regard to the size of the establishment or agency and the number and needs of the patients<sup>13</sup>, he has the qualifications, skills and experience necessary to manage the establishment or agency<sup>14</sup>, and he is physically and mentally fit to do so<sup>15</sup>; and
- 510 (c) full and satisfactory information is available in relation to him in respect of each of the specified matters<sup>16</sup>.

1 'Registered provider', in relation to an establishment or independent medical agency, means a person who is registered under the Care Standards Act 2000 Pt II (ss 11-42) (see PARAS 759-761) as the person carrying on the establishment or agency: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1). As to the meaning of 'establishment' see PARA 748 note 3. As to the meaning of 'independent medical agency' see PARA 750. As to the meaning of 'person' see PARA 17 note 2. As to references to a 'person who carries on an establishment or independent medical agency' see PARA 751 note 15.

2 'Registered manager', in relation to an establishment or independent medical agency, means a person who is registered under the Care Standards Act 2000 Pt II (ss 11-42) as the manager of the establishment or agency: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1).

3 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 11(1)(a). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 11 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 10 (amended by SI 2006/1703). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 As to the meaning of 'organisation' see PARA 762 note 8.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 11(1)(b)(i).

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 11(1)(b)(ii).

- 7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 11(1)(b)(iii).
- 8 As to the Commission for Healthcare Audit and Inspection see PARA 552.
- 9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 11(2)(a).
- 10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 11(2)(b).
- 11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 12(1). As to the equivalent provision to reg 12 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 11 (amended by SI 2002/2622).
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 12(2)(a).
- 13 As to the meaning of 'patient' see PARA 748 note 9.
- 14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 12(2)(b)(i).
- 15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 12(2)(b)(ii).
- 16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 12(2)(c) (amended by SI 2002/865). The specified matters are those specified in the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 2 (see PARA 762): s 12(2)(c) (as so amended).

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### 763 Appointment of manager

NOTE 11--SI 2002/325 reg 11 further amended: SI 2009/2541.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/764. Registered person: general requirements.

#### **764. Registered person: general requirements.**

The registered provider<sup>1</sup> and the registered manager<sup>2</sup> must, having regard to the size of the establishment<sup>3</sup> or independent medical agency<sup>4</sup> and the number and needs of the patients<sup>5</sup>, carry on or (as the case may be) manage the establishment or agency with sufficient care, competence and skill<sup>6</sup>.

If the registered provider is:

- 511 (1) an individual, he must undertake<sup>7</sup>;
- 512 (2) an organisation<sup>8</sup>, it must ensure that the responsible individual<sup>9</sup> undertakes<sup>10</sup>;
- 513 (3) a partnership, it must ensure that one of the partners undertakes<sup>11</sup>;

from time to time such training as is appropriate to ensure that he has the skills necessary for carrying on the establishment or agency<sup>12</sup>.

The registered manager must undertake from time to time such training as is appropriate to ensure that he has the skills necessary for managing the establishment or agency<sup>13</sup>.

Where the registered person<sup>14</sup> or the responsible individual is convicted of any criminal offence, whether in England and Wales or elsewhere, he must forthwith give notice in writing to the Commission for Healthcare Audit and Inspection<sup>15</sup> of: (a) the date and place of the conviction<sup>16</sup>; (b) the offence of which he was convicted<sup>17</sup>; and (c) the penalty imposed on him in respect of the offence<sup>18</sup>. It is an offence to fail to comply with this provision<sup>19</sup>.

Where there is more than one registered person in respect of an establishment or independent medical agency, anything which is required<sup>20</sup> to be done by the registered person must, if done by one of the registered persons, not be required to be done by any of the other registered persons<sup>21</sup>.

1 As to the meaning of 'registered provider' see PARA 763 note 1.

2 As to the meaning of 'registered manager' see PARA 763 note 2.

3 As to the meaning of 'establishment' see PARA 748 note 3.

4 As to the meaning of 'independent medical agency' see PARA 750.

5 As to the meaning of 'patient' see PARA 748 note 9.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 13(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 13 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 12. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

- 7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 13(2)(a).
- 8 As to the meaning of 'organisation' see PARA 762 note 8.
- 9 As to the meaning of 'responsible individual' see PARA 762.
- 10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 13(2)(b).
- 11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 13(2)(c).
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 13(2).
- 13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 13(3).
- 14 'Registered person', in relation to an establishment or independent medical agency, means any person who is the registered provider or the registered manager of the establishment or agency: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1). As to the meaning of 'person' see PARA 17 note 2.
- 15 As to the Commission for Healthcare Audit and Inspection see PARA 552.
- 16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 14(a). As to the equivalent provision to reg 14 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 13.
- 17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 14(b).
- 18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 14(c).
- 19 See PARA 801.
- 20 Ie under the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968.
- 21 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 50. As to the equivalent provision to reg 50 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 48.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (2) REGISTRATION/765. Fees.

## **765. Fees.**

Persons<sup>1</sup> who are registered<sup>2</sup> must pay to the registration authority<sup>3</sup>, at such time as may be prescribed<sup>4</sup>: (1) an annual fee of such amount as may be determined<sup>5</sup>, where the registration authority is the Commission for Healthcare Audit and Inspection<sup>6</sup>; and (2) of such amount as may be prescribed, where the registration authority is the Welsh Ministers<sup>7</sup>. A fee payable may, without prejudice to any other method of recovery, be recovered summarily as a civil debt<sup>8</sup>.

The Commission for Healthcare Audit and Inspection may from time to time make and publish provision determining the amount of any fee payable to it under the provisions<sup>9</sup> relating to independent health services<sup>10</sup>. Such provision may include provision for different amounts to be payable in different cases, or classes of case<sup>11</sup>, and for different amounts to be payable by persons of different descriptions<sup>12</sup>. Before making any provision, the Commission for Healthcare Audit and Inspection must consult such bodies as appear to it to be representative of the persons liable to pay the fee<sup>13</sup>; and no provision may be made without the consent of the Secretary of State<sup>14</sup>. If the Secretary of State considers it necessary or desirable to do so, he may by regulations make provision determining the amount of a fee payable to the Commission instead of the amount for which provision is made by the Commission<sup>15</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to registration see PARA 759.

3 As to the registration authority see PARA 755.

4 'Prescribed' means prescribed by regulations: Care Standards Act 2000 s 121(1). As to the meaning of 'regulations' see PARA 753 note 4. The annual fee is payable by the registered provider on: (1) in the case of an existing provider whose annual fee became payable under the Commission for Healthcare Audit and Inspection (Fees and Frequency of Inspections) Regulations 2004, SI 2004/661, reg 5 (revoked) between 1 April 2006 and 31 July 2006 (including on either of those two dates), 1 August 2006 and thereafter on the anniversary of the date on which the annual fee was payable under reg 5 (Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32B(a) (reg 32B added by SI 2006/1734)); (2) in the case of any other existing provider, the anniversary of the date on which the annual fee was payable under the Commission for Healthcare Audit and Inspection (Fees and Frequency of Inspections) Regulations 2004, SI 2004/661, reg 5 (revoked) (Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32B(b) (as so added)); and (3) in the case of a new provider, the date on which the certificate is issued and thereafter on the anniversary of that date (reg 32B(c) (as so added)). 'Existing provider' means a person who immediately before 1 August 2006 was registered under the Care Standards Act 2000 Pt II (ss 11-42) as carrying on an independent hospital, an independent clinic or an independent medical agency: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1) (definition added by SI 2006/1734). 'New provider' means a person who carries on an independent hospital, an independent clinic or an independent medical agency and did so for the first time on or after 1 August 2006: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1) (definition added by SI 2006/1734). 'Certificate' means a certificate of registration: reg 2(1) (definition added by SI 2006/1734). As to certificates of registration see PARA 760. As to the meaning of 'registered provider' see PARA 763 note 1. As to the meaning of 'independent hospital' see PARA 748. As to the meaning of 'independent clinic' see PARA 749. As to the meaning of 'independent medical agency' see PARA 750. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). At the date at which this volume states the law no equivalent provision in relation to Wales had been made. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

5 See under the Care Standards Act 2000 s 113A: see the text to notes 9-15.

6 See the Care Standards Act 2000 s 16(3)(a) (s 16(3) substituted by the Health and Social Care (Community Health and Standards) Act 2003 s 105(1), (6)). As to the Commission for Healthcare Audit and Inspection see PARA 552.

7 Care Standards Act 2000 s 16(3)(b) (as substituted: see note 6); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6. The prescribed fee is nil: Care Standards Act 2000 and the Children Act 1989 (Abolition of Fees) (Wales) Regulations 2006, SI 2006/878, reg 3(1).

8 Care Standards Act 2000 s 16(4). As to the summary recovery of civil debts see **MAGISTRATES** vol 29(2) (Reissue) PARA 826.

9 See the Care Standards Act 2000 Pt II (ss 11-42).

10 See the Care Standards Act 2000 s 113A(1) (s 113A added by the Health and Social Care (Community Health and Standards) Act 2003 s 105(1), (2)). At the date at which this volume states the law the Care Standards Act 2000 s 113A is in force in relation to England only.

11 Care Standards Act 2000 s 113A(2)(a) (as added: see note 10).

12 Care Standards Act 2000 s 113A(2)(a) (as added: see note 10).

13 Care Standards Act 2000 s 113A(3) (as added: see note 10; and substituted by the Education and Inspections Act 2006 Sch 14 paras 38, 53(1), (3)). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

14 Care Standards Act 2000 s 113A(4) (as added: see note 10). As to the Secretary of State see PARA 6 note 8.

15 See the Care Standards Act 2000 s 113A(5) (as added: see note 10). Before making any such regulations, the Secretary of State must consult the Commission and such other persons as appear to him to be appropriate: see s 113A(6) (as so added). At the date at which this volume states the law no such regulations had been made.

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### 765 Fees



TEXT AND NOTES 1-7--Now an annual fee of the prescribed amount: Care Standards Act 2000 s 16(3) (substituted by Health and Social Care Act 2008 Sch 5 para 15 (in force in relation to England (SI 2009/2862); in force 1 October 2010 in relation to Wales (SI 2010/807)).

TEXT AND NOTES 9-15--Care Standards Act 2000 s 113A prospectively repealed: Health and Social Care Act 2008 Sch 5 para 31, Sch 15 Pt 1. As to fees payable to the Care Quality Commission, see the Health and Social Care Act 2008 s 85.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/766.  
Regulations: governance matters.

### **(3) QUALITY AND STANDARDS**

#### **766. Regulations: governance matters.**

Regulations<sup>1</sup> may impose in relation to establishments<sup>2</sup> and independent medical agencies<sup>3</sup> any requirements which the appropriate minister thinks fit for the purposes of the provisions relating to independent health services<sup>4</sup> and may in particular make any provision such as is mentioned below<sup>5</sup>.

The regulations may:

- 514 (1) make provision as to the persons who are fit to carry on or manage an establishment or independent medical agency<sup>6</sup>;
- 515 (2) make provision as to the persons who are fit to work at an establishment or for the purposes of an independent medical agency<sup>7</sup>;
- 516 (3) make provision as to the fitness of premises to be used as an establishment or for the purposes of an independent medical agency<sup>8</sup>;
- 517 (4) make provision for securing the welfare of persons accommodated in an establishment or provided with services by an establishment or an independent medical agency<sup>9</sup>;
- 518 (5) make provision as to the management and control of the operations of an establishment or independent medical agency<sup>10</sup>;
- 519 (6) make provision as to the numbers of persons, or persons of any particular type, working at an establishment or for the purposes of an independent medical agency<sup>11</sup>;
- 520 (7) make provision as to the management and training of such persons<sup>12</sup>;
- 521 (8) impose requirements as to the financial position of an establishment or independent medical agency<sup>13</sup>;
- 522 (9) make provision requiring the person carrying on an establishment or independent medical agency to appoint a manager in prescribed circumstances<sup>14</sup>.

The regulations may make provision as to the conduct of establishments and independent medical agencies, and such regulations may in particular: (a) make provision as to the facilities and services to be provided in establishments and by independent medical agencies<sup>15</sup>; (b) make provision as to the keeping of accounts<sup>16</sup>; (c) make provision as to the keeping of documents and records<sup>17</sup>; (d) make provision as to the notification of events occurring in establishments or in premises used for the purposes of independent medical agencies<sup>18</sup>; (e) make provision as to the giving of notice by the person carrying on an establishment or independent medical agency of periods during which he or (if he does not manage it himself) the manager proposes to be absent from the establishment or agency, and specify the information to be supplied in such a notice<sup>19</sup>; (f) provide for the making of adequate arrangements for the running of an establishment or independent medical agency during a period when the manager is absent from it<sup>20</sup>; (g) make provision as to the giving of notice by a person registered in respect of an establishment or independent medical agency of any intended change in the identity of the manager or the person carrying it on<sup>21</sup>; (h) make provision as to the giving of notice by a person registered in respect of an establishment or independent medical agency which is carried on by a body corporate of changes in the ownership of the body or the identity of its officers<sup>22</sup>; (i) make provision requiring the payment,

in respect of any notification required to be made by virtue of head (h) above, of a fee of such amount as may be determined<sup>23</sup> where notification is made to the Commission for Healthcare Audit and Inspection<sup>24</sup>, or the prescribed amount where notification is made to the Welsh Ministers<sup>25</sup>; (j) make provision requiring arrangements to be made by the person who carries on, or manages, an establishment or independent medical agency for dealing with complaints made by or on behalf of those seeking, or receiving, any of the services provided in the establishment or by the agency and requiring that person to take steps for publicising the arrangements<sup>26</sup>; (k) make provision requiring arrangements to be made by the person who carries on, or manages, an independent hospital<sup>27</sup>, independent clinic<sup>28</sup> or independent medical agency for securing that any medical<sup>29</sup> or psychiatric treatment<sup>30</sup>, or listed services<sup>31</sup>, provided in or for the purposes of the establishment or (as the case may be) for the purposes of the agency are of appropriate quality and meet appropriate standards<sup>32</sup>.

1 Before making regulations under the Care Standards Act 2000 s 22, except regulations which amend other regulations made thereunder and do not, in the opinion of the appropriate minister, effect any substantial change in the provision made by those regulations, the appropriate minister must consult any persons he considers appropriate: s 22(9). As to the meaning of 'regulations' see PARA 753 note 4. As to the meaning of 'appropriate minister' see PARA 753 note 3. As to the meaning of 'person' see PARA 17 note 2. As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, and the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, have been made: see PARAS 769-784.

2 As to the meaning of 'establishment' see PARA 748 note 18.

3 As to the meaning of 'independent medical agency' see PARA 750.

4 See the Care Standards Act 2000 Pt II (ss 11-42).

5 Care Standards Act 2000 s 22(1).

6 Care Standards Act 2000 s 22(2)(a). Regulations under s 22(2)(a) may, in particular, make provision for prohibiting persons from managing an establishment or independent medical agency unless they are registered in, or in a particular part of, one of the registers of social workers and social care workers maintained under s 56(1) (see **SOCIAL SERVICES AND COMMUNITY CARE**): s 22(3).

7 Care Standards Act 2000 s 22(2)(b). Regulations under s 22(2)(b) may, in particular, make provision for prohibiting persons from working in such positions as may be prescribed at an establishment, or for the purposes of an independent medical agency, unless they are registered in, or in a particular part of, one of the registers of social workers and social care workers maintained under s 56(1) (see **SOCIAL SERVICES AND COMMUNITY CARE**): s 22(4). 'Prescribed' means prescribed by regulations: s 121(1).

8 Care Standards Act 2000 s 22(2)(c).

9 See the Care Standards Act 2000 s 22(2)(d). Regulations under s 22(2)(d) may, in particular, make provision: (1) as to the promotion and protection of the health of persons such as are therein mentioned (s 22(5)(a)); (2) as to the control and restraint of adults accommodated in, or provided with services by, an establishment (s 22(5)(b)); (3) as to the control, restraint and discipline of children accommodated in, or provided with services by, an establishment (s 22(5)(c)). 'Adult' means a person who is not a child: s 121(1). As to the meaning of 'child' see PARA 756 note 13.

10 Care Standards Act 2000 s 22(2)(f).

11 Care Standards Act 2000 s 22(2)(g).

12 Care Standards Act 2000 s 22(2)(h).

13 Care Standards Act 2000 s 22(2)(i).

14 Care Standards Act 2000 s 22(2)(j).

15 Care Standards Act 2000 s 22(7)(a).

16 Care Standards Act 2000 s 22(7)(b).

17 Care Standards Act 2000 s 22(7)(c).

18 Care Standards Act 2000 s 22(7)(d).

19 Care Standards Act 2000 s 22(7)(e).

20 Care Standards Act 2000 s 22(7)(f).

21 Care Standards Act 2000 s 22(7)(g). As to references to a 'person who carries on an establishment or independent medical agency' see PARA 751 note 15.

22 Care Standards Act 2000 s 22(7)(h).

23 Ie under the Care Standards Act 2000 s 113A: see PARA 765.

24 Care Standards Act 2000 s 22(7)(i)(i) (s 22(7)(i) amended by the Health and Social Care (Community Health and Standards) Act 2003 s 105(1), (7)). As to the Commission for Healthcare Audit and Inspection see PARA 552.

25 Care Standards Act 2000 s 22(7)(i)(ii) (as amended: see note 24); Government of Wales Act 2006 Sch 11 para 32. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6.

26 Care Standards Act 2000 s 22(7)(j).

27 As to the meaning of 'independent hospital' see PARA 748.

28 As to the meaning of 'independent clinic' see PARA 749.

29 As to the meaning of 'medical' see PARA 748 note 6.

30 As to the meaning of 'treatment' see PARA 748 note 3.

31 As to the meaning of 'listed services' see PARA 748: definition applied by the Care Standards Act 2000 s 22(11).

32 Care Standards Act 2000 s 22(7)(k).

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **766 Regulations: governance matters**

TEXT AND NOTES--Where Her Majesty's Chief Inspector of Education, Children's Services and Skills is of the opinion that a relevant establishment or agency is not meeting the required standards, as set out in the relevant regulations and national minimum standards, he may serve a compliance notice on the registered owner or proprietor of the establishment or agency as well as on the person managing it, specifying how, in his view, the establishment or agency is failing to meet the standards and the steps that need to be taken to remedy this and the effect of a failure to comply with the notice: Care Standards Act 2000 s 22A(1)-(3) (s 22A added by Children and Young Persons Act 2008 s 26(2)). A 'relevant establishment or agency' means an establishment or agency in relation to which the functions of the registration authority under the Care Standards Act 2000 s 13 (see PARA 760) are exercisable by the CIECSS: s 22A(6).

Failing to take the specified steps within the specified period is an offence: Care Standards Act 2000 s 22A(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 22A(5). As to the standard scale see PARA 28 NOTE 12.

The registration authority (ie the Chief Inspector or, in Wales, the Welsh Ministers) may impose a requirement preventing any new admissions of children to certain residential settings; and where it does so, a notice must be served on each person who is registered in respect of the establishment concerned: Care Standards Act 2000 s 22B (added by Children and Young Persons Act 2008 s 27).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/767. Regulations: other matters.

## **767. Regulations: other matters.**

Regulations<sup>1</sup> may require the person carrying on an establishment or independent medical agency<sup>2</sup> to make an annual return to the registration authority<sup>3</sup>. Provision may be made by such regulations as to the contents of the return and the period in respect of which and date by which it is to be made<sup>4</sup>.

Regulations<sup>5</sup> may: (1) provide for the provisions relating to independent health services<sup>6</sup> to apply with prescribed<sup>7</sup> modifications in cases where a person who was the only person registered<sup>8</sup> in respect of an establishment or independent medical agency has died<sup>9</sup>; (2) require the personal representatives<sup>10</sup> of a deceased person who was registered in respect of an establishment or independent medical agency to notify the registration authority of his death<sup>11</sup>. Regulations under head (1) may in particular provide for the establishment or independent medical agency to be carried on for a prescribed period by a person who is not registered in respect of it<sup>12</sup>; and include provision for the prescribed period to be extended by such further period as the registration authority may allow<sup>13</sup>.

Regulations<sup>14</sup> may require any person appointed as:

- 523 (a) a receiver or manager of the property of a relevant company<sup>15</sup>;
- 524 (b) the liquidator or provisional liquidator of a relevant company<sup>16</sup>; or
- 525 (c) the trustee in bankruptcy of a relevant individual<sup>17</sup>,

to: (i) give notice of his appointment to the registration authority<sup>18</sup>; (ii) appoint a person to manage the establishment or independent medical agency in question<sup>19</sup>.

1 As to the meaning of 'regulations' see PARA 753 note 4. At the date at which this volume states the law no regulations relevant to this work had been made.

2 As to references to a 'person who carries on an establishment or independent medical agency' see PARA 751 note 15. As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'establishment' see PARA 748 note 18. As to the meaning of 'independent medical agency' see PARA 750.

3 Care Standards Act 2000 s 33(1). As to the registration authority see PARA 755.

4 Care Standards Act 2000 s 33(2).

5 The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, and the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, have been made: see PARA 791.

6 Ie the Care Standards Act 2000 Pt II (ss 11-42).

- 7 'Prescribed' means prescribed by regulations: Care Standards Act 2000 s 121(1).
- 8 As to registration see PARA 759.
- 9 Care Standards Act 2000 s 35(1)(a).
- 10 As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.
- 11 Care Standards Act 2000 s 35(1)(b).
- 12 Care Standards Act 2000 s 35(2)(a).
- 13 Care Standards Act 2000 s 35(2)(b).
- 14 The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, and the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, have been made: see PARA 790.
- 15 Care Standards Act 2000 s 34(2)(a). 'Relevant company' means a company which is registered under Pt II (ss 11-42) in respect of an establishment or independent medical agency; and 'company' includes a partnership: s 34(3).
- 16 Care Standards Act 2000 s 34(2)(b).
- 17 Care Standards Act 2000 s 34(2)(c). 'Relevant individual' means an individual who is registered under Pt II (ss 11-42) in respect of an establishment or independent medical agency: s 34(3).
- 18 Care Standards Act 2000 s 34(1)(a).
- 19 Care Standards Act 2000 s 34(1)(b).

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/768.  
National minimum standards.

## **768. National minimum standards.**

The appropriate minister<sup>1</sup> may prepare and publish statements of national minimum standards applicable to establishments<sup>2</sup> or independent medical agencies<sup>3</sup>. The appropriate minister must keep the standards set out in the statements under review and may publish amended statements whenever he considers it appropriate to do so<sup>4</sup>. Before issuing a statement, or an amended statement which in the opinion of the appropriate minister effects a substantial change in the standards, the appropriate minister must consult any persons<sup>5</sup> he considers appropriate<sup>6</sup>.

The standards must be taken into account: (1) in the making of any decision by the registration authority<sup>7</sup>; (2) in any proceedings for the making of an order<sup>8</sup> cancelling the registration of a person or relating to conditions in respect thereof<sup>9</sup>; (3) in any proceedings on an appeal against such a decision or order<sup>10</sup>; and (4) in any proceedings for an offence under regulations<sup>11</sup> under the provisions<sup>12</sup> relating to independent health services<sup>13</sup>.

1 As to the meaning of 'appropriate minister' see PARA 753 note 3.

2 As to the meaning of 'establishment' see PARA 748 note 18.

3 Care Standards Act 2000 s 23(1). As to the meaning of 'independent medical agency' see PARA 750.

4 Care Standards Act 2000 s 23(2).

5 As to the meaning of 'person' see PARA 17 note 2.

6 Care Standards Act 2000 s 23(3). As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

7 Care Standards Act 2000 s 23(4)(a). As to the registration authority see PARA 755.

8 Ie under the Care Standards Act 2000 s 20: see PARA 761.

9 Care Standards Act 2000 s 23(4)(b).

10 Care Standards Act 2000 s 23(4)(c). As to such appeals see PARA 761.

11 As to the meaning of 'regulations' see PARA 753 note 4.



12    le the Care Standards Act 2000 Pt II (ss 11-42).

13    See the Care Standards Act 2000 s 23(4)(d). As to such offences see PARA 800 et seq.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/769. Statement of purpose.

### **769. Statement of purpose.**

The registered person<sup>1</sup> must compile in relation to the establishment<sup>2</sup> or independent medical agency<sup>3</sup> a written<sup>4</sup> statement (known as the 'statement of purpose') which must consist of a statement as to the following matters<sup>5</sup>: (1) the aims and objectives of the establishment or agency<sup>6</sup>; (2) the name and address of the registered provider<sup>7</sup> and of any registered manager<sup>8</sup>; (3) the relevant qualifications and experience of the registered provider and any registered manager<sup>9</sup>; (4) the number, relevant qualifications and experience of the staff working in the establishment, or for the purposes of the agency<sup>10</sup>; (5) the organisational structure of the establishment or agency<sup>11</sup>; (6) the kinds of treatment and any other services provided for the purposes of the establishment or agency, the range of needs which those services are intended to meet and the facilities which are available for the benefit of patients<sup>12</sup>; (7) the arrangements made for consultation with patients about the operation of the establishment or agency<sup>13</sup>; (8) the arrangements made for contact between any in-patients and their relatives<sup>14</sup>, friends and representatives<sup>15</sup>; (9) the arrangements for dealing with complaints<sup>16</sup>; (10) the arrangements for respecting the privacy and dignity of patients<sup>17</sup>.

The registered person must supply a copy of the statement of purpose to the Commission for Healthcare Audit and Inspection<sup>18</sup> and must make the statement available for inspection by every patient and any person<sup>19</sup> acting on behalf of a patient<sup>20</sup>.

It is an offence to fail to comply with any of these provisions<sup>21</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'establishment' see PARA 748 note 3.

3 As to the meaning of 'independent medical agency' see PARA 750.

4 As to the meaning of 'written' see PARA 7 note 2.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 6(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 6 and Sch 1, in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 5, Sch 1. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the review of the statement of purpose see PARA 771.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 1.

7 As to the meaning of 'registered provider' see PARA 763 note 1.

- 8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 2. As to the meaning of 'registered manager' see PARA 763 note 2.
- 9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 3.
- 10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 4.
- 11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 5.
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 6. As to the meaning of 'patient' see PARA 748 note 9.
- 13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 7.
- 14 'Relative', in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent: Children Act 1989 s 105(1) (definition amended by the Civil Partnership Act 2004 s 75(1), (4)); definition applied by the Care Standards Act 2000 s 121(1), (13), Interpretation Act 1978 s 11. As to the meaning of 'child' see PARA 756 note 13. As to the construction of references to any relationship between two persons see the Interpretation Act 1978 s 5, Sch 1 (amended by the Family Law Reform Act 1987 s 33(1), Sch 2 PARA 73, Sch 3 PARA 1); Family Law Reform Act 1987 s 1 (amended by the Adoption and Children Act 2002 s 139(1), Sch 3 PARAS 50, 51); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 125; **STATUTES** vol 44(1) (Reissue) PARA 1382. As to civil partnerships see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW**.
- 15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 8.
- 16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 9.
- 17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 1 para 10.
- 18 As to the Commission for Healthcare Audit and Inspection see PARA 552.
- 19 As to the meaning of 'person' see PARA 17 note 2.
- 20 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 6(2). Nothing in reg 15(1) (see PARA 773) or reg 25(1) and (2) (see PARA 782) requires or authorises the registered person to contravene, or not to comply with: (1) any other provision of the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968 (reg 6(3)(a)); or (2) the conditions for the time being in force in relation to the registration of the registered person under the Care Standards Act 2000 Pt II (ss 11-42) (Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 6(3)(b)).
- 21 See PARA 801.

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/770. Patients' guide.

## **770. Patients' guide.**

The registered person<sup>1</sup> must produce a written<sup>2</sup> guide to the establishment<sup>3</sup> or independent medical agency<sup>4</sup> (known as the 'patients' guide') which must consist of: (1) a summary of the statement of purpose<sup>5</sup>; (2) the terms and conditions in respect of services to be provided for patients<sup>6</sup>, including as to the amount and method of payment of charges for all aspects of their treatment<sup>7</sup>; (3) a standard form of contract for the provision of services and facilities by the registered provider to patients<sup>8</sup>; (4) a summary of the complaints procedure<sup>9</sup>; (5) a summary of the results of the consultation conducted<sup>10</sup> under the system for reviewing the quality of treatment and other services<sup>11</sup>; (6) the address and telephone number of the Commission for Healthcare Audit and Inspection<sup>12</sup>; and (7) the most recent inspection report prepared by the Commission or information as to how a copy of that report may be obtained<sup>13</sup>.

The registered person must supply a copy of the patients' guide to the Commission for Healthcare Audit and Inspection, and must make the patients' guide available for inspection by every patient and any person<sup>14</sup> acting on behalf of a patient<sup>15</sup>.

It is an offence to fail to comply with any of these provisions<sup>16</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'written' see PARA 7 note 2.

3 As to the meaning of 'establishment' see PARA 748 note 3.

4 As to the meaning of 'independent medical agency' see PARA 750.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 7(1)(a). As to the statement of purpose see PARA 769. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 7 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 6. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 As to the meaning of 'patient' see PARA 748 note 9.

7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 7(1)(b). As to the meaning of 'treatment' see PARA 748 note 3.

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 7(1)(c).

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 7(1)(d). As to complaints procedures see PARA 780.

10 In accordance with the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 17(3): see PARA 775.

11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 7(1)(e).

12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 7(1)(f). As to the Commission for Healthcare Audit and Inspection see PARA 552.

13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 7(1)(g). As to inspection reports see PARA 786.

14 As to the meaning of 'person' see PARA 17 note 2.

15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 7(2). As to the review of the patients' guide see PARA 771.

16 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
 REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/771.  
 Review of statement of purpose and patients' guide.

### **771. Review of statement of purpose and patients' guide.**

The registered person<sup>1</sup> must keep under review and, where appropriate, revise the statement of purpose<sup>2</sup> and the content of the patients' guide<sup>3</sup>, and notify the Commission for Healthcare Audit and Inspection<sup>4</sup> of any such revision<sup>5</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the statement of purpose see PARA 769.

3 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 8(a). As to the patients' guide see PARA 770. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 8 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 7. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 As to the Commission for Healthcare Audit and Inspection see PARA 552.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 8(b).

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/772.  
Policies and procedures.

## **772. Policies and procedures.**

The registered person<sup>1</sup> must prepare and implement written<sup>2</sup> statements of the policies to be applied and the procedures to be followed in or for the purposes of an establishment<sup>3</sup> in relation to:

- 526 (1) the arrangements for admission or acceptance of patients<sup>4</sup>, their transfer to a hospital<sup>5</sup> where required and, in the case of an establishment which admits in-patients, their discharge<sup>6</sup>;
- 527 (2) the arrangements for assessment, diagnosis and treatment<sup>7</sup> of patients<sup>8</sup>;
- 528 (3) ensuring that the premises used by or for the purposes of an establishment are at all times fit for the purpose for which they are used<sup>9</sup>;
- 529 (4) monitoring the quality and suitability of facilities and equipment<sup>10</sup>;
- 530 (5) identifying, assessing and managing risks to employees<sup>11</sup>, patients and visitors associated with the operation of the establishment<sup>12</sup>;
- 531 (6) the creation, management, handling and storage of records and other information<sup>13</sup>;
- 532 (7) the provision of information to patients and others<sup>14</sup>;
- 533 (8) the recruitment, induction and retention of employees and their employment conditions<sup>15</sup>;
- 534 (9) the grant and withdrawal of practising privileges<sup>16</sup> to medical practitioners in establishments where such privileges are granted<sup>17</sup>; and
- 535 (10) ensuring that, where research is carried out in an establishment, it is carried out with the consent of any patient or patients involved, is appropriate for the establishment concerned and is conducted in accordance with up-to-date and authoritative published guidance on the conduct of research projects<sup>18</sup>.

The registered person must prepare and implement a written statement of the policies to be applied and the procedures to be followed for the purposes of an independent medical agency<sup>19</sup> in relation to: (a) the arrangements for transfer to a hospital, where required<sup>20</sup>; and (b) each of the matters specified in heads (2), (6), (7) and (8) above<sup>21</sup>.

The registered person must prepare and implement written statements of policies to be applied and procedures to be followed in or for the purposes of an establishment, or for the purpose of an independent medical agency, which ensure that: (i) the capacity<sup>22</sup> of each patient to consent to treatment is assessed<sup>23</sup>; (ii) in the case of a patient who has capacity, properly informed consent to treatment is obtained<sup>24</sup>; (iii) in the case of patient who lacks capacity the requirements of the Mental Capacity Act 2005 are complied with before any treatment proposed for him is administered<sup>25</sup>; and (iv) information about a patient's health and treatment is disclosed only to those persons who need to be aware of that information in order to treat the patient effectively or minimise any risk of the patient harming himself or another person, or for the purposes of the proper administration of the establishment or independent medical agency<sup>26</sup>.

The registered person must make a copy of all written statements prepared in accordance with these provisions available for inspection by the Commission for Healthcare Audit and Inspection<sup>27</sup>. The registered person must review the operation of each policy and procedure implemented under these provisions<sup>28</sup>, those relating to complaints<sup>29</sup>, and, in so far as they



apply to him, those relating to certain specific services<sup>30</sup>, at intervals of not more than three years and must, where appropriate, prepare and implement revised policies and procedures<sup>31</sup>. It is an offence to fail to comply with any of these provisions<sup>32</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'written' see PARA 7 note 2.

3 As to the meaning of 'establishment' see PARA 748 note 3.

4 As to the meaning of 'patient' see PARA 748 note 9.

5 As to the meaning of 'hospital' see PARA 748.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(a). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 9 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 8 (amended by SI 2006/1703). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

7 As to the meaning of 'treatment' see PARA 748 note 3.

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(b).

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(c).

10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(d).

11 As to the meaning of 'employee' see PARA 749 note 14.

12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(e).

13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(f).

14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(g).

15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(h).

16 'Practising privileges' in relation to a medical practitioner, refers to the grant to a person who is not employed in an independent hospital of permission to practise in that hospital: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1). As to the meaning of 'medical practitioner' see PARA 749 note 10. As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'independent hospital' see PARA 748.

17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(i).

18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(j).

19 As to the meaning of 'independent medical agency' see PARA 750.

20 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(2)(a).

21 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(2)(b).

22 For the purpose of any decision required to be made as to a person's capacity, lack of capacity must be interpreted in accordance with the Mental Capacity Act 2005 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641 et seq) and any reference to a person who lacks capacity must be construed accordingly: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(4) (added by SI 2007/1898).

23 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(3)(a) (reg 3(a), (b) amended, 3(c) substituted, by SI 2007/1898). As to a patient's consent to treatment see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 198 et seq.

24 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(3)(b) (as amended: see note 23).

25 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(3)(c) (as substituted: see note 23).

26 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(3)(d).

27 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(5). As to the Commission for Healthcare Audit and Inspection see PARA 552.

28 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(4)(a).

29 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(4)(b). The provisions concerned are those under reg 23: see PARA 780.

30 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(4)(c). The provisions concerned are those under regs 35 (see PARA 792), 41(10) (see PARA 796), 45 and 46 (see PARA 798).

31 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(4).

32 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/773. Quality of treatment and other service provision.

### **773. Quality of treatment and other service provision.**

The registered person<sup>1</sup> must provide treatment<sup>2</sup> and any other services to patients<sup>3</sup> in accordance with the statement of purpose<sup>4</sup>, and must ensure that the treatment and any other services provided to each patient<sup>5</sup>: (1) meet his individual needs<sup>6</sup>; (2) reflect published research evidence and guidance issued by the appropriate professional and expert bodies, as to good practice in the treatment of the condition from which the patient is suffering<sup>7</sup>; and (3) are (where necessary) provided by means of appropriate equipment<sup>8</sup>.

The registered person must ensure that all equipment used in or for the purposes of the establishment<sup>9</sup>, or for the purposes of the independent medical agency<sup>10</sup>, is suitable for the purposes for which it is to be used<sup>11</sup>, and properly maintained and in good working order<sup>12</sup>. Where reusable medical devices<sup>13</sup> are used in an establishment or independent medical agency, the registered person must ensure that appropriate procedures are implemented in relation to cleaning, disinfection, inspection, packaging, sterilisation, transportation and storage of such devices<sup>14</sup>. The registered person must make suitable arrangements: (a) for the ordering, recording, handling, safe keeping, safe administration and disposal of medicines used in or for the purposes of the establishment, or for the purposes of the independent medical agency<sup>15</sup>; (b) to minimise the risk of infection and toxic conditions and the spread of infection between patients and staff (including medical practitioners<sup>16</sup> with practising privileges)<sup>17</sup>. If an establishment provides food for patients, the registered provider must ensure that it is: (i) provided in adequate quantities and at appropriate intervals<sup>18</sup>; (ii) properly prepared, wholesome and nutritious<sup>19</sup>; and (iii) suitable for the needs of patients<sup>20</sup>; and that the menu is varied at suitable intervals<sup>21</sup>.

It is an offence to fail to comply with any of these provisions<sup>22</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'treatment' see PARA 748 note 3.

3 As to the meaning of 'patient' see PARA 748 note 9.

4 As to the statement of purpose see PARA 769.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(1). This provision is expressed to be subject to reg 6(3): see PARA 769. As to the review of the quality of treatment and services see PARA 775. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 15 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 14. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(1)(a).

- 7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(1)(b).
- 8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(1)(c).
- 9 As to the meaning of 'establishment' see PARA 748 note 3.
- 10 As to the meaning of 'independent medical agency' see PARA 750.
- 11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(2)(a).
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(2)(b).
- 13 'Medical device' has the same meaning as in the Medical Devices Regulations 1994, SI 1994/3017 (revoked): Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1). As to the definition of 'medical device' see now the Medical Devices Regulations 2002, SI 2002/618; and **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 231.
- 14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(3). The procedures implemented must be such as to ensure that reusable medical devices are handled safely and decontaminated effectively prior to re-use: reg 15(4).
- 15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(5).
- 16 As to the meaning of 'medical practitioner' see PARA 749 note 10.
- 17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(6). As to the meaning of 'practising privileges' see PARA 772 note 16.
- 18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(7)(a).
- 19 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(7)(b).
- 20 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(7)(c).
- 21 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15(7).
- 22 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/774. Care and welfare of patients.

#### **774. Care and welfare of patients.**

The registered person<sup>1</sup> must, so far as practicable (and, where the person lacks capacity<sup>2</sup>, in accordance with the principles of the Mental Capacity Act 2005<sup>3</sup>) enable each patient<sup>4</sup> to make decisions about matters affecting the way in which he is cared for and his general welfare<sup>5</sup>. The registered person must ensure that patients are permitted to control their own money, except where a patient does not wish, or lacks the capacity, to do so, in which case the registered person must ensure that patient monies are properly held and recorded and that receipts are issued as appropriate<sup>6</sup>. The registered person must, so far as practicable (and, where the person lacks capacity, in accordance with the principles of the Mental Capacity Act 2005) ascertain and take into account the wishes and feelings of all patients in determining the manner in which they are cared for and services are provided to them<sup>7</sup>.

The registered person must make suitable arrangements to ensure that the establishment<sup>8</sup> or independent medical agency<sup>9</sup> is conducted: (1) in a manner which respects the privacy and dignity of patients<sup>10</sup>; and (2) with due regard to the sex, religious and spiritual needs, racial origin, and cultural and linguistic background and any disability of patients<sup>11</sup>.

It is an offence to fail to comply with any of the above provisions<sup>12</sup>.

The registered provider<sup>13</sup> and the registered manager<sup>14</sup> (if any) must each take all reasonable steps to ensure that the establishment or independent medical agency is conducted on the basis of good personal and professional relationships between each other<sup>15</sup>, and between each of them and the patients and staff<sup>16</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to references to a person lacking capacity see PARA 772 note 22.

3 As to the principles relating to persons who lack capacity under the Mental Capacity Act 2005 see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641 et seq.

4 As to the meaning of 'patient' see PARA 748 note 9.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 16(1) (reg 16(1), (3) amended by SI 2007/1898). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 16 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 15. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 16(2).

7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 16(3) (as amended: see note 5).

8 As to the meaning of 'establishment' see PARA 748 note 3.

9 As to the meaning of 'independent medical agency' see PARA 750.

10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 16(4)(a).

11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 16(4)(b).

12 See PARA 801.

13 As to the meaning of 'registered provider' see PARA 763 note 1.

14 As to the meaning of 'registered manager' see PARA 763 note 2.

15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 16(5)(a).

16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 16(5)(b).

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/775.  
Review of quality of treatment and other services.

### **775. Review of quality of treatment and other services.**

The registered person<sup>1</sup> must introduce and maintain a system for reviewing at appropriate intervals the quality of treatment<sup>2</sup> and other services provided in or for the purposes of an establishment<sup>3</sup> or for the purposes of an independent medical agency<sup>4</sup>. The system must provide for consultation with patients<sup>5</sup> and their representatives<sup>6</sup>. The registered person must supply to the Commission for Healthcare Audit and Inspection<sup>7</sup> a report in respect of any such review conducted by him and make a copy of the report available to patients<sup>8</sup>.

It is an offence to fail to comply with any of these provisions<sup>9</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'treatment' see PARA 748 note 3.

3 As to the meaning of 'establishment' see PARA 748 note 3.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 17(1). As to the meaning of 'independent medical agency' see PARA 750. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 17 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 16. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

5 As to the meaning of 'patient' see PARA 748 note 9.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 17(3).

7 As to the Commission for Healthcare Audit and Inspection see PARA 552.

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 17(2).

9 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission.

See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/776. Staffing.

## **776. Staffing.**

The registered person<sup>1</sup> must, having regard to the nature of the establishment<sup>2</sup> or independent medical agency<sup>3</sup> and the number and needs of patients<sup>4</sup>, ensure that there are at all times the appropriate number of suitably qualified, skilled and experienced persons<sup>5</sup> employed<sup>6</sup> in or for the purposes of the establishment or, as the case may be, for the purposes of the agency<sup>7</sup>. The registered person must ensure that each person employed in or for the purposes of the establishment or, for the purposes of the independent medical agency<sup>8</sup>: (1) receives appropriate training, supervision and appraisal<sup>9</sup>; (2) is enabled from time to time to obtain further qualifications appropriate to the work he performs<sup>10</sup>; and (3) is provided with a job description outlining his responsibilities<sup>11</sup>.

The registered person must ensure that each person employed in or for the purposes of the establishment, or for the purposes of the independent medical agency and any medical practitioner<sup>12</sup> with practising privileges<sup>13</sup>, receives regular and appropriate appraisal and must take such steps as may be necessary to address any aspect of a health care professional's<sup>14</sup> clinical practice<sup>15</sup>, or the performance of a member of staff who is not a health care professional<sup>16</sup>, which is found to be unsatisfactory<sup>17</sup>.

The registered person must ensure that: (a) no person is employed to work in or for the purposes of the establishment or for the purposes of the independent medical agency<sup>18</sup>; and (b) no medical practitioner is granted consulting or practising privileges<sup>19</sup>; unless that person is fit to work in or for the purposes of the establishment, or for the purposes of the agency<sup>20</sup>. A person is not fit to work in or for the purposes of an establishment, or for the purposes of an independent medical agency, unless: (i) he is of integrity and good character<sup>21</sup>; (ii) he has the qualifications, skills and experience which are necessary for the work which he is to perform<sup>22</sup>; (iii) he is physically and mentally fit for that work<sup>23</sup>; and (iv) full and satisfactory information is available in relation to him in respect of each of the specified matters<sup>24</sup>.

It is an offence to fail to comply with any of these provisions<sup>25</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'establishment' see PARA 748 note 3.

3 As to the meaning of 'independent medical agency' see PARA 750.

4 As to the meaning of 'patient' see PARA 748 note 9.

5 As to the meaning of 'person' see PARA 17 note 2.

6 As to the meaning of 'employed' see PARA 749 note 14.

7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 18(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to regs 18, 19 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, regs 17, 18 (amended by SI 2002/2622). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 18(2). The registered person must take reasonable steps to ensure that any person working in an establishment or independent medical agency who is not employed by him and to whom reg 18(2) does not apply, is appropriately supervised while carrying out his duties: reg 18(4).

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 18(2)(a).

10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 18(2)(b).

11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 18(2)(c).

12 As to the meaning of 'medical practitioner' see PARA 749 note 10.

13 As to the meaning of 'practising privileges' see PARA 772 note 16.

14 As to the meaning of 'health care professional' see PARA 762 note 14.

15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 18(3)(a).

16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 18(3)(b).

17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 18(3).

18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 19(1)(a).

19 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 19(1)(b).

20 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 19(1).

21 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 19(2)(a).

22 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 19(2)(b).

23 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 19(2)(c).

24 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 19(2)(d) (amended by SI 2002/865). The specified matters are those specified in Sch 2: see PARA 762 note 14.

25 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **776 Staffing**

NOTE 7--SI 2002/325 reg 18 further amended: SI 2009/2541.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/777.  
Guidance for health care professionals.

### **777. Guidance for health care professionals.**

The registered person<sup>1</sup> must ensure that any code of ethics or professional practice prepared by a body which is responsible for regulation of members of a health care profession<sup>2</sup> is made available in the establishment<sup>3</sup> or independent medical agency<sup>4</sup> to members of the health care profession in question<sup>5</sup>. It is an offence to fail to comply with any of these provisions<sup>6</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'health care profession' see PARA 762 note 14.

3 As to the meaning of 'establishment' see PARA 748 note 3.

4 As to the meaning of 'independent medical agency' see PARA 750.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 20. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 20 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 19. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/778. Records.

## **778. Records.**

The registered person<sup>1</sup> must ensure that, except in certain cases<sup>2</sup>: (1) a comprehensive medical<sup>3</sup> record is maintained in relation to each patient<sup>4</sup> which includes a contemporaneous note of all treatment<sup>5</sup> provided to him<sup>6</sup>, and his medical history and all other notes prepared by a health care professional<sup>7</sup> about his case<sup>8</sup>; and (2) the record is retained for a period which is not less than that specified<sup>9</sup> in relation to the type of patient in question or, where more than one such period could apply, the longest of them<sup>10</sup>. The registered person must ensure that: (a) the medical record for a person who is currently a patient is kept in a secure place in the establishment<sup>11</sup> or the independent medical agency<sup>12</sup> premises<sup>13</sup>; and (b) the medical record for a person who is not currently a patient is stored securely (whether in the establishment or the independent medical agency premises or elsewhere) and that it can be located if required<sup>14</sup>.

The registered person must ensure that the records required to be kept for inspection<sup>15</sup> are maintained and that they are: (i) kept up to date<sup>16</sup>; (ii) at all times available for inspection in the establishment or the independent medical agency premises by any person authorised by the Commission for Healthcare Audit and Inspection<sup>17</sup> to enter and inspect the establishment or agency premises<sup>18</sup>; and (iii) retained for a period of not less than three years beginning on the date of the last entry<sup>19</sup>.

It is an offence to fail to comply with any of these provisions<sup>20</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 In cases to which the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 40(5) applies: see PARA 795.

3 As to the meaning of 'medical' see PARA 748 note 6.

4 As to the meaning of 'patient' see PARA 748 note 9.

5 As to the meaning of 'treatment' see PARA 748 note 3.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 21(1)(a)(i). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 21 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 20. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

7 As to the meaning of 'health care professional' see PARA 762 note 14.

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 21(1)(a)(ii).

9 As to the periods specified see the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 3 Pt I. The registered person must ensure that the register of patients to be maintained in relation to an independent medical agency under Sch 3 Pt I para 1 includes the name of the medical practitioner by whom each patient is treated: reg 49. It is an offence to fail to comply with reg 49: see PARA 801. As to the meaning of 'medical practitioner' see PARA 749 note 10.

10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 21(1)(b).

11 As to the meaning of 'establishment' see PARA 748 note 3.

12 As to the meaning of 'independent medical agency' see PARA 750.

13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 21(2)(a).

14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 21(2)(b).

15 As to such records see the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, Sch 3 Pt II (amended by SI 2005/2114).

16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 21(3)(a).

17 As to the Commission for Healthcare Audit and Inspection see PARA 552.

18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 21(3)(b). As to inspections see PARA 785.

19 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 21(3)(c).

20 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

## **778 Records**

NOTE 15--SI 2001/3968 Sch 3 Pt II further amended: SI 2009/1892.





Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/779. Staff views as to conduct of establishment or agency.

### **779. Staff views as to conduct of establishment or agency.**

The registered person<sup>1</sup> must make arrangements to enable any person<sup>2</sup> employed<sup>3</sup> in or for the purposes of the establishment<sup>4</sup>, or for the purposes of the independent medical agency<sup>5</sup>, and any medical practitioner<sup>6</sup> with practising privileges<sup>7</sup>, to inform the registered person and the Commission for Healthcare Audit and Inspection<sup>8</sup> of their views about<sup>9</sup> any matter relating to the conduct of the establishment or agency so far as it may affect the health and welfare of patients<sup>10</sup>. It is an offence to fail to comply with any of these provisions<sup>11</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to the meaning of 'employed' see PARA 749 note 14.

4 As to the meaning of 'establishment' see PARA 748 note 18.

5 As to the meaning of 'independent medical agency' see PARA 750.

6 As to the meaning of 'medical practitioner' see PARA 749 note 10.

7 As to the meaning of 'practising privileges' see PARA 772 note 16.

8 As to the Commission for Healthcare Audit and Inspection see PARA 552.

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 22(2). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 22 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 21. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 22(1). As to the meaning of 'patient' see PARA 748 note 9.

11 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/780. Complaints.

## **780. Complaints.**

The registered person<sup>1</sup> must establish a complaints procedure for considering complaints made to the registered person by a patient<sup>2</sup> or a person<sup>3</sup> acting on behalf of a patient<sup>4</sup>. The registered person must supply a written copy of the complaints procedure<sup>5</sup> to every patient and, upon request, to any person acting on behalf of a patient<sup>6</sup> and any person who is considering whether to become a patient<sup>7</sup>.

The registered person must ensure that any complaint made under the complaints procedure is fully investigated<sup>8</sup>. The registered person must maintain a record of each complaint, including details of the investigations made, the outcome and any action taken in consequence<sup>9</sup>.

The registered person must supply to the Commission for Healthcare Audit and Inspection annually a statement containing a summary of the complaints made during the preceding 12 months<sup>10</sup> and the action taken in response<sup>11</sup>. The complaints procedure must be reviewed at intervals of not more than three years and, where appropriate, revised<sup>12</sup>.

It is an offence to fail to comply with any of these provisions<sup>13</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'patient' see PARA 748 note 9.

3 As to the meaning of 'person' see PARA 17 note 2.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 23(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 23 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 22. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

5 The written copy of the complaints procedure must include: (1) the name, address and telephone number of the Commission for Healthcare Audit and Inspection (Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 23(4)(a)); and (2) the procedure (if any) which has been notified by the Commission to the registered person for making complaints to the Commission relating to the establishment or independent medical agency (reg 23(4)(b)). As to the meaning of 'written' see PARA 7 note 2. As to the Commission for Healthcare Audit and Inspection see PARA 552. As to the meaning of 'establishment' see PARA 748 note 3. As to the meaning of 'independent medical agency' see PARA 750.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 23(3)(a).

7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 23(3)(b).

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 23(2).

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 23(4). The requirements of reg 21(3)(b) and (c) (see PARA 778) apply to that record: reg 23(4).

10 As to the meaning of 'month' see PARA 28 note 16.

11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 23(5).

12 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(4); and PARA 772.

13 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/781. Research.

## **781. Research.**

The registered person<sup>1</sup> must ensure that: (1) before any research involving patients<sup>2</sup>, information about patients, or bodily material and organs is undertaken in or for the purposes of an establishment<sup>3</sup>, or for the purposes of an independent medical agency<sup>4</sup>, a research proposal is prepared and approval is obtained from the appropriate research ethics committee<sup>5</sup>; and (2) all such research projects include adequate safeguards for patients and employees<sup>6</sup>. It is an offence to fail to comply with any of these provisions<sup>7</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'patient' see PARA 748 note 9.

3 As to the meaning of 'establishment' see PARA 748 note 3.

4 As to the meaning of 'independent medical agency' see PARA 750.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 24(1)(a). 'Appropriate research ethics committee' means an ethics committee established or recognised in accordance with the Medicines for Human Use (Clinical Trials) Regulations 2004, SI 2004/1031, Pt 2 (regs 5-10) (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 84 et seq), or any other committee established to advise on the ethics of research investigations in human beings, and recognised for that purpose by or on behalf of the Secretary of State: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 24(2) (substituted by SI 2004/1031). As to the Secretary of State see PARA 6 note 8.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 24(1)(b). As to the meaning of 'employee' see PARA 749 note 14. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 24 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 23. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

7 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to

the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **781 Research**

TEXT AND NOTES--SI 2002/235 reg 24 further amended: SI 2009/3258.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/782.  
Fitness of premises.

## **782. Fitness of premises.**

The premises used as an establishment<sup>1</sup> or independent medical agency<sup>2</sup> must be in a location, and of a physical design and layout, which are suitable for the purpose of achieving the aims and objectives set out in the statement of purpose<sup>3</sup>. The registered person<sup>4</sup> must ensure that:

- 536 (1) the premises are of sound construction and kept in a good state of repair externally and internally<sup>5</sup>;
- 537 (2) the size and layout of rooms are suitable for the purposes for which they are to be used and are suitably equipped and furnished<sup>6</sup>;
- 538 (3) all parts of the establishment or independent medical agency are kept clean and meet appropriate standards of hygiene<sup>7</sup>;
- 539 (4) all parts of the establishment or independent medical agency to which patients<sup>8</sup> have access are, so far as reasonably practicable, free from hazards to their safety<sup>9</sup>; and
- 540 (5) if surgical procedures are undertaken, life support systems are used, or obstetric services and, in connection with childbirth, medical<sup>10</sup> services, are provided in the establishment or independent medical agency, such electrical supply is provided during the interruption of public supply as is needed to safeguard the lives of the patients<sup>11</sup>.

The registered person must provide for employees<sup>12</sup> and medical practitioners<sup>13</sup> with practising privileges<sup>14</sup>: (a) suitable facilities and accommodation, other than sleeping accommodation, including facilities for the purpose of changing<sup>15</sup>, and storage facilities<sup>16</sup>; and (b) where the provision of such accommodation is needed by employees in connection with their work, sleeping accommodation<sup>17</sup>.

The registered person must<sup>18</sup>, after consultation with the fire and rescue authority<sup>19</sup>: (i) take adequate precautions against the risk of fire, including the provision and maintenance of suitable fire equipment<sup>20</sup>; (ii) provide adequate means of escape in the event of a fire<sup>21</sup>; (iii) make arrangements for persons employed<sup>22</sup> in the establishment or for the purposes of the independent medical agency, and medical practitioners to whom practising privileges have been granted, to receive suitable training in fire prevention<sup>23</sup>; (iv) ensure, by means of fire drills and practices at suitable intervals, that the persons employed in the establishment or for the purposes of the independent medical agency and, so far as practicable, patients and medical practitioners to whom practising privileges have been granted, are aware of the procedure to be followed in case of fire<sup>24</sup>; and (v) review fire precautions, the suitability of fire equipment and the procedure to be followed in case of fire at intervals not exceeding 12 months<sup>25</sup>.

It is an offence to fail to comply with any of these provisions<sup>26</sup>.

1 As to the meaning of 'establishment' see PARA 748 note 3.

2 As to the meaning of 'independent medical agency' see PARA 750.



3 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(1). This provision is expressed to be subject to reg 6(3): see PARA 769. As to the statement of purpose see PARA 769. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 25 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 24 (amended by SI 2005/1541; SI 2005/2929). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 As to the meaning of 'registered person' see PARA 764 note 14.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(2)(a).

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(2)(b).

7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(2)(c).

8 As to the meaning of 'patient' see PARA 748 note 9.

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(2)(d).

10 As to the meaning of 'medical' see PARA 748 note 6.

11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(2)(e).

12 As to the meaning of 'employee' see PARA 749 note 14.

13 As to the meaning of 'medical practitioner' see PARA 749 note 10.

14 As to the meaning of 'practising privileges' see PARA 772 note 16.

15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(3)(a)(i).

16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(3)(a)(ii).

17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(3)(b).

18 Where the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 (see **FIRE SERVICES**) applies to the premises, the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(4) does not apply, and the registered person must ensure that the requirements of that Order and any regulations made under it, except for art 23 (duties of employees), are complied with in respect of those premises: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(4A) (added by SI 2005/1541).

19 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(4) (amended by SI 2004/3168; SI 2005/1541). 'Fire and rescue authority' in relation to an establishment or independent medical agency, means the fire and rescue authority under the Fire and Rescue Services Act 2004 (see **FIRE SERVICES**) for the area in which the establishment or agency is situated: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(5) (substituted by SI 2004/3168).

20 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(4)(a).

21 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(4)(b).

22 As to the meaning of 'person' see PARA 17 note 2. As to the meaning of 'employed' see PARA 749 note 14.

23 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(4)(c).

24 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(4)(d).

25 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 25(4)(e). As to the meaning of 'month' see PARA 28 note 16.

26 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **782 Fitness of premises**

NOTE 3--SI 2002/235 reg 24 amended: SI 2009/3258.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/783. Visits by registered provider.

### **783. Visits by registered provider.**

Where the registered provider<sup>1</sup> is an individual, but is not in day to day charge of the establishment<sup>2</sup> or independent medical agency<sup>3</sup>, he must visit the establishment or agency premises in accordance with the following provisions<sup>4</sup>. Where the registered provider is an organisation<sup>5</sup> or a partnership, the establishment or independent medical agency must be visited in accordance with these provisions by: (1) the responsible individual<sup>6</sup> or one of the partners, as the case may be<sup>7</sup>; (2) another of the directors or other persons responsible for the management of the organisation or partnership<sup>8</sup>; or (3) an employee<sup>9</sup> of the organisation or partnership who is not directly concerned with the conduct of the establishment or agency<sup>10</sup>.

Visits must take place at least once every six months<sup>11</sup> and must be unannounced<sup>12</sup>. The person carrying out the visit must: (a) interview, with their consent and in private (if necessary, by telephone), such of the patients<sup>13</sup> and their representatives and such employees as appears to him to be necessary in order to form an opinion of the standard of treatment<sup>14</sup> and other services provided in or for the purposes of the establishment, or for the purposes of the independent medical agency<sup>15</sup>; (b) inspect records of any complaints<sup>16</sup> and, in the case of an establishment, its premises<sup>17</sup>; and (c) prepare a written<sup>18</sup> report on the conduct of the establishment or independent medical agency<sup>19</sup>. The registered provider must supply a copy of the report to the Commission for Healthcare Audit and Inspection<sup>20</sup>, the registered manager<sup>21</sup>, and, in the case of a visit on behalf of an organisation or partnership, to specified persons<sup>22</sup>.

It is an offence to fail to comply with any of these provisions<sup>23</sup>.

1 As to the meaning of 'registered provider' see PARA 763 note 1.

2 As to the meaning of 'establishment' see PARA 748 note 3.

3 As to the meaning of 'independent medical agency' see PARA 750.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 26 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 25. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

5 As to the meaning of 'organisation' see PARA 762 note 8.

6 As to the meaning of 'responsible individual' see PARA 762.

7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(2)(a).

- 8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(2)(b).
- 9 As to the meaning of 'employee' see PARA 749 note 14.
- 10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(2)(c).
- 11 As to the meaning of 'month' see PARA 28 note 16.
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(3).
- 13 As to the meaning of 'patient' see PARA 748 note 9.
- 14 As to the meaning of 'treatment' see PARA 748 note 3.
- 15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(4)(a).
- 16 As to complaints see PARA 780.
- 17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(4)(b). As to fitness of premises see PARA 782.
- 18 As to the meaning of 'written' see PARA 7 note 2.
- 19 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(4)(c).
- 20 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(5)(a). As to the Commission for Healthcare Audit and Inspection see PARA 552.
- 21 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(5)(b). As to the meaning of 'registered manager' see PARA 763 note 2.
- 22 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 26(5)(c). The specified persons are: (1) where the registered provider is an organisation, each of the directors or other persons responsible for the management of the organisation (reg 26(5)(c)(i)); and (2) where the registered provider is a partnership, each of the partners (reg 26(5)(c)(ii)).
- 23 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **783 Visits by registered provider**

TEXT AND NOTES 11, 12--SI 2001/3968 reg 26(3) amended: SI 2008/2352.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/784. Financial position.

#### **784. Financial position.**

The registered provider<sup>1</sup> must carry on the establishment<sup>2</sup> or independent medical agency<sup>3</sup> in such manner as is likely to ensure that the establishment or agency will be financially viable for the purpose of achieving the aims and objectives set out in the statement of purpose<sup>4</sup>.

The registered person<sup>5</sup> must, if the Commission for Healthcare Audit and Inspection<sup>6</sup> so requests, provide the Commission with such information and documents as it may require for the purpose of considering the financial viability of the establishment or independent medical agency, including: (1) the annual accounts of the establishment or agency, certified by an accountant<sup>7</sup>; or (2) the annual accounts of the organisation<sup>8</sup> which is the registered provider of the establishment or independent medical agency, certified by an accountant, together with accounts relating to the establishment or agency itself<sup>9</sup>. The registered person must also provide the Commission with such other information as it may require in order to consider the financial viability of the establishment or independent medical agency, including: (a) a reference from a bank expressing an opinion as to the registered provider's financial standing<sup>10</sup>; (b) information as to the financing and financial resources of the establishment or agency<sup>11</sup>; (c) where the registered provider is a company, information as to any of its associated companies<sup>12</sup>; and (d) a certificate of insurance for the registered provider in respect of liability which may be incurred by him in relation to the establishment or agency in respect of death, injury, public liability, damage or other loss<sup>13</sup>.

It is an offence to fail to comply with any of these provisions<sup>14</sup>.

1 As to the meaning of 'registered provider' see PARA 763 note 1.

2 As to the meaning of 'establishment' see PARA 748 note 3.

3 As to the meaning of 'independent medical agency' see PARA 750.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 27(1). As to the statement of purpose see PARA 769. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 27 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 26. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

5 As to the meaning of 'registered person' see PARA 764 note 14.

6 As to the Commission for Healthcare Audit and Inspection see PARA 552.

7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 27(2)(a).

- 8 As to the meaning of 'organisation' see PARA 762 note 8.
- 9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 27(2)(b).
- 10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 27(3)(a).
- 11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 27(3)(b).
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 27(3)(c). One company is associated with another if one of them has control of the other, or both are under the control of the same person: s 27(4). As to the meaning of 'person' see PARA 17 note 2.
- 13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 27(3)(d). As to insurance generally see **INSURANCE**.
- 14 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/785. Inspections.

## **785. Inspections.**

The registration authority<sup>1</sup> may at any time require a person<sup>2</sup> who carries on<sup>3</sup> or manages an establishment or independent medical agency to provide it with any information relating to the establishment or agency which the registration authority considers it necessary or expedient to have for the purposes of its functions under the provisions<sup>4</sup> relating to independent health services<sup>5</sup>.

A person authorised by the registration authority may at any time enter and inspect premises which are used, or which he has reasonable cause to believe to be used, as an establishment or for the purposes of an independent medical agency<sup>6</sup>. A person so authorised may:

- 541 (1) make any examination into the state and management of the premises and treatment<sup>7</sup> of patients<sup>8</sup> or persons accommodated or cared for there which he thinks appropriate<sup>9</sup>;
- 542 (2) inspect and take copies of any documents or records (including medical and other personal records)<sup>10</sup>;
- 543 (3) interview in private the manager or the person carrying on the establishment or independent medical agency<sup>11</sup>;
- 544 (4) interview in private any person working there<sup>12</sup>;
- 545 (5) interview in private any patient or person accommodated or cared for there who consents to be interviewed<sup>13</sup>;
- 546 (6) seize and remove any document or other material or thing found on the premises which he has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement<sup>14</sup>;
- 547 (7) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers of entry and inspection<sup>15</sup>;
- 548 (8) take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers<sup>16</sup>.

Where the premises in question are used as an establishment and the person so authorised is a medical practitioner or registered nurse<sup>17</sup>, and has reasonable cause to believe that a patient or person accommodated or cared for there is not receiving proper care<sup>18</sup>, the person so authorised may, with the consent of that patient or person, examine him in private<sup>19</sup>.

The Secretary of State<sup>20</sup> may by regulations<sup>21</sup> require the Commission for Healthcare Audit and Inspection<sup>22</sup> to arrange for premises which are used as an establishment or for the purposes of an independent medical agency to be inspected on such occasions or at such intervals as may be prescribed<sup>23</sup>.

Any person who: (a) intentionally obstructs the exercise of any power of entry or inspection<sup>24</sup>; or (b) fails without a reasonable excuse to comply with any requirement relating to those powers<sup>25</sup>, is guilty of an offence<sup>26</sup>.

1 As to the registration authority see PARA 755.



2 As to the meaning of 'person' see PARA 17 note 2.

3 The references in the Care Standards Act 2000 s 31 to the person carrying on the establishment or independent medical agency include, in the case of an establishment or agency which is carried on by a company, a reference to any director, manager, secretary or other similar officer of the company: s 32(4). As to references to a 'person who carries on an establishment or independent medical agency' see PARA 751 note 15. As to the meaning of 'establishment' see PARA 748 note 18. As to the meaning of 'independent medical agency' see PARA 750.

4 Ie the Care Standards Act 2000 Pt II (ss 11-42).

5 Care Standards Act 2000 s 31(1). The power to require the provision of information includes: (1) power to require the provision of copies of any documents or records (including medical and other personal records) (s 31(1A)(a) (s 31(1A) added by the Health and Social Care (Community Health and Standards) Act 2003 s 108(1), (2)); and (2) in relation to records kept by means of a computer, power to require the provision of the records in legible form (Care Standards Act 2000 s 31(1A)(b) (as so added)). As to the meaning of 'medical' see PARA 748 note 6.

6 Care Standards Act 2000 s 31(2). A person who proposes to exercise any power of entry or inspection must, if so required, produce some duly authenticated document showing his authority to exercise the power: s 31(8). As to inspection reports see PARA 786.

7 As to the meaning of 'treatment' see PARA 748 note 3.

8 As to the meaning of 'patient' see PARA 748 note 9.

9 Care Standards Act 2000 s 31(3)(a).

10 See the Care Standards Act 2000 s 31(3)(b) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 108(1), (3)(a)). The powers under this provision include: (1) power to require the manager or the person carrying on the establishment or independent medical agency to produce any documents or records, wherever kept, for inspection on the premises (Care Standards Act 2000 s 31(4)(a)); and (2) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away (s 31(4)(b)). A person authorised to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus which is or has been in use in connection with the records in question: s 32(3). As to records see PARA 778.

11 Care Standards Act 2000 s 31(3)(c).

12 Care Standards Act 2000 s 31(3)(d) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 108(1), (3)(b)).

13 Care Standards Act 2000 s 31(3)(e).

14 Care Standards Act 2000 s 32(1). The conditions or requirements referred to are any imposed under the Care Standards Act 2000 Pt II (ss 11-42).

15 Care Standards Act 2000 s 32(2)(a).

16 Care Standards Act 2000 s 32(2)(b).

17 Care Standards Act 2000 s 31(5)(a). As to the registration of nurses see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 716 et seq.

18 Care Standards Act 2000 s 31(5)(b).

19 Care Standards Act 2000 s 31(6) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 14 Pt 2). Such power may be exercised in relation to a person who is incapable of giving consent without that person's consent: Care Standards Act 2000 s 31(6) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 paras 16, 23(a)). As to decisions as to a person's capacity see PARA 772 note 22.

20 As to the Secretary of State see PARA 6 note 8.

21 As to the meaning of 'regulations' see PARA 753 note 4.

22 As to the Commission for Healthcare Audit and Inspection see PARA 552.

23 See the Care Standards Act 2000 s 31(7) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 paras 16, 23(b)). 'Prescribed' means prescribed by regulations: Care Standards Act 2000 s 121(1). The Commission for Healthcare Audit and Inspection must arrange for premises which are used as an establishment, or for the purposes of an independent medical agency, to be inspected a minimum of once in every five year period: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32A(1) (reg 32A added by SI 2006/539). Any such inspection may be unannounced: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32A(2) (as so added). 'Five year period' means a period commencing on 1 April in any year and ending on 31 March in the fifth year following: reg 32A(3) (as so added). As to the meaning of 'establishment' in this context see PARA 748 note 3. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). At the date at which this volume states the law no equivalent provision had been made in relation to Wales. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

24 Care Standards Act 2000 s 31(9)(a). The powers referred to are those conferred by s 31 or s 32: see the text to notes 1-23.

25 Care Standards Act 2000 s 31(9)(b).

26 Care Standards Act 2000 s 31(9). The penalty for such an offence is, on summary conviction, a fine not exceeding level 4 on the standard scale: s 31(9). As to the standard scale see PARA 28 note 12. As to proceedings for offences see PARA 803. As to offences by bodies corporate see PARA 804.

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/(3) QUALITY AND STANDARDS/786.  
Inspection reports.

### **786. Inspection reports.**

Where any premises which are used as an establishment<sup>1</sup> or for the purposes of an independent medical agency<sup>2</sup> have been inspected<sup>3</sup>, the registration authority<sup>4</sup> must prepare a report on the matters inspected<sup>5</sup> and, without delay, send a copy of the report to each person<sup>6</sup> who is registered<sup>7</sup> in respect of the establishment or agency<sup>8</sup>. The registration authority must make copies of any such report available for inspection at its offices by any person at any reasonable time; and may take any other steps for publicising a report which it considers appropriate<sup>9</sup>. Any person who asks the registration authority for a copy of a report is entitled to have one on payment of a reasonable fee determined by the registration authority<sup>10</sup>.

1 As to the meaning of 'establishment' see PARA 748 note 18.

2 As to the meaning of 'independent medical agency' see PARA 750.

3 Ie under the Care Standards Act 2000 s 31: see PARA 785.

4 As to the registration authority see PARA 755.

5 Care Standards Act 2000 s 32(5)(a).

6 As to the meaning of 'person' see PARA 17 note 2.

7 As to registration see PARA 759.

8 Care Standards Act 2000 s 32(5)(b).

9 Care Standards Act 2000 s 32(6).

10 Care Standards Act 2000 s 32(7). Nothing in this provision prevents the registration authority from providing a copy free of charge when it considers it appropriate to do so: s 32(7).

### **UPDATE**

#### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and

managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (4) NOTICES/787. Notification of events.

## **(4) NOTICES**

### **787. Notification of events.**

The registered person<sup>1</sup> must give notice to the Commission for Healthcare Audit and Inspection<sup>2</sup> of:

- 549 (1) the death of a patient<sup>3</sup> in an establishment<sup>4</sup>, or during treatment<sup>5</sup> provided by an establishment or independent medical agency<sup>6</sup>, or as a consequence of treatment provided by an establishment or independent medical agency<sup>7</sup>, within the period of seven days ending on the date of the death, and the circumstances of his death<sup>8</sup>;
- 550 (2) any serious injury to a patient<sup>9</sup>;
- 551 (3) the outbreak in an establishment of any infectious disease, which in the opinion of any medical practitioner<sup>10</sup> employed<sup>11</sup> in the establishment is sufficiently serious to be so notified<sup>12</sup>;
- 552 (4) any allegation of misconduct resulting in actual or potential harm to a patient by the registered person, any person<sup>13</sup> employed in or for the purposes of the establishment or for the purposes of the independent medical agency, or any medical practitioner with practising privileges<sup>14</sup>.

Such notice must be given within the period of 24 hours beginning with the event in question and, if given orally, must be confirmed in writing<sup>15</sup> as soon as practicable<sup>16</sup>.

It is an offence to fail to comply with any of these provisions<sup>17</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the Commission for Healthcare Audit and Inspection see PARA 552.

3 As to the meaning of 'patient' see PARA 748 note 9.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 28(1)(a)(i). As to the meaning of 'establishment' see PARA 748 note 3. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 28 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 27. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

5 As to the meaning of 'treatment' see PARA 748 note 3.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 28(1)(a)(ii). As to the meaning of 'independent medical agency' see PARA 750.

- 7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 28(1)(a)(iii).
- 8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 28(1)(a).
- 9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 28(1)(b).
- 10 As to the meaning of 'medical practitioner' see PARA 749 note 10.
- 11 As to the meaning of 'employed' see PARA 749 note 14.
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 28(1)(c). As to the prevention and control of infectious diseases see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 884 et seq.
- 13 As to the meaning of 'person' see PARA 17 note 2.
- 14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 28(1)(d). As to the meaning of 'practising privileges' see PARA 772 note 16.
- 15 As to the meaning of 'writing' see PARA 7 note 2.
- 16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 28(2).
- 17 See PARA 801.

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (4) NOTICES/788. Notice of absence.

### **788. Notice of absence.**

Where the registered provider<sup>1</sup>, if he is the person<sup>2</sup> in day to day charge of the establishment<sup>3</sup> or independent medical agency<sup>4</sup>, or the registered manager<sup>5</sup>, proposes to be absent from the establishment or independent medical agency for a continuous period of 28 days or more, the registered person<sup>6</sup> must give notice in writing<sup>7</sup> to the Commission for Healthcare Audit and Inspection<sup>8</sup> of the proposed absence<sup>9</sup>. Except in the case of an emergency<sup>10</sup>, the notice must be given no later than one month<sup>11</sup> before the proposed absence commences or within such shorter period as may be agreed with the Commission<sup>12</sup>. The notice must specify with respect to the proposed absence: (1) its length or expected length<sup>13</sup>; (2) the reason for it<sup>14</sup>; (3) the arrangements which have been made for running the establishment or independent medical agency<sup>15</sup>; (4) the name, address and qualifications of the person who will be responsible for the establishment or independent medical agency during that absence<sup>16</sup>; and (5) in the case of the absence of the registered manager, the arrangements that have been, or are proposed to be, made for appointing another person to manage the establishment or independent medical agency during that absence, including the proposed date by which the appointment is to be made<sup>17</sup>.

Where the registered provider, if he is the person in day to day charge of the establishment or independent medical agency<sup>18</sup>, or the registered manager<sup>19</sup>, has been absent from the establishment or agency for a continuous period of 28 days or more, and the Commission for Healthcare Audit and Inspection has not been given notice of the absence, the registered person must, without delay, give notice in writing to the Commission of the absence, specifying the matters set out in heads (1) to (5) above<sup>20</sup>.

The registered person must notify the Commission for Healthcare Audit and Inspection of the return to duty of the registered provider or (as the case may be) the registered manager not later than seven days after the date of his return<sup>21</sup>.

It is an offence to fail to comply with any of these provisions<sup>22</sup>.

1 As to the meaning of 'registered provider' see PARA 763 note 1.

2 As to the meaning of 'person' see PARA 17 note 2.

3 As to the meaning of 'establishment' see PARA 748 note 3.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(1)(a). As to the meaning of 'independent medical agency' see PARA 750. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 29 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 28. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(1)(b). As to the meaning of 'registered manager' see PARA 763 note 2.



- 6 As to the meaning of 'registered person' see PARA 764 note 14.
- 7 As to the meaning of 'writing' see PARA 7 note 2.
- 8 As to the Commission for Healthcare Audit and Inspection see PARA 552.
- 9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(1).
- 10 Where the absence arises as a result of an emergency, the registered person must give notice of the absence within one week of its occurrence specifying the matters set out in heads (1)-(5) in the text: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(3).
- 11 As to the meaning of 'month' see PARA 28 note 16.
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(2).
- 13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(2)(a).
- 14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(2)(b).
- 15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(2)(c).
- 16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(2)(d).
- 17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(2)(e).
- 18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(4)(a).
- 19 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(4)(b).
- 20 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(4).
- 21 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 29(5).
- 22 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2.  
REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (4) NOTICES/789. Notice of changes.

### **789. Notice of changes.**

The registered person<sup>1</sup> must give notice in writing<sup>2</sup> to the Commission for Healthcare Audit and Inspection<sup>3</sup> as soon as it is practicable to do so if any of the following events take place or are proposed to take place:

- 553 (1) a person<sup>4</sup> other than the registered person carries on<sup>5</sup> or manages the establishment or independent medical agency<sup>6</sup>;
- 554 (2) a person ceases to carry on or manage the establishment or independent medical agency<sup>7</sup>;
- 555 (3) where the registered person is an individual, he changes his name<sup>8</sup>;
- 556 (4) where the registered provider<sup>9</sup> is a partnership, there is any change in the membership of the partnership<sup>10</sup>;
- 557 (5) where the registered provider is an organisation<sup>11</sup>: (a) the name or address of the organisation is changed<sup>12</sup>; (b) there is any change of director, manager, secretary or other similar officer of the organisation<sup>13</sup>; (c) there is any change in the identity of the responsible individual<sup>14</sup>;
- 558 (6) where the registered provider is an individual, a trustee in bankruptcy is appointed<sup>15</sup>;
- 559 (7) where the registered provider is a company or partnership, a receiver, manager, liquidator or provisional liquidator is appointed<sup>16</sup>; or
- 560 (8) the premises of the establishment or independent medical agency are significantly altered or extended, or additional premises are acquired<sup>17</sup>.

It is an offence to fail to comply with any of these provisions<sup>18</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'writing' see PARA 7 note 2.

3 As to the Commission for Healthcare Audit and Inspection see PARA 552.

4 As to the meaning of 'person' see PARA 17 note 2.

5 As to references to a 'person who carries on an establishment or independent medical agency' see PARA 751 note 15. As to the meaning of 'establishment' see PARA 748 note 3. As to the meaning of 'independent medical agency' see PARA 750.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(a). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 30 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 29. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

- 7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(b).
- 8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(c).
- 9 As to the meaning of 'registered provider' see PARA 763 note 1.
- 10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(d).
- 11 As to the meaning of 'organisation' see PARA 762 note 8.
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(e)(i).
- 13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(e)(ii).
- 14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(e)(iii). As to the meaning of 'responsible individual' see PARA 762.
- 15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(f). As to trustees in bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 316 et seq.
- 16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(g). As to the appointment of such persons see **COMPANY AND PARTNERSHIP INSOLVENCY**.
- 17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 30(h).
- 18 See PARA 801.

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (4) NOTICES/790. Appointment of liquidators etc.

## **790. Appointment of liquidators etc.**

Any person<sup>1</sup> appointed as:

- 561 (1) the receiver or manager of the property of a company or partnership which is a registered provider<sup>2</sup> of an establishment<sup>3</sup> or independent medical agency<sup>4</sup>;
- 562 (2) liquidator or provisional liquidator of a company which is the registered provider of an establishment or independent medical agency<sup>5</sup>;
- 563 (3) the trustee in bankruptcy of a registered provider of an establishment or independent medical agency<sup>6</sup>;

must: (a) forthwith notify the Commission for Healthcare Audit and Inspection<sup>7</sup> of his appointment indicating the reasons for it<sup>8</sup>; (b) appoint a manager to take full-time day to day charge of the establishment or independent medical agency in any case where there is no registered manager<sup>9</sup>; and (c) before the end of the period of 28 days beginning on the date of his appointment, notify the Commission of his intentions regarding the future operation of the establishment or independent medical agency<sup>10</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the meaning of 'registered provider' see PARA 763 note 1.

3 As to the meaning of 'establishment' see PARA 748 note 3.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 31(2)(a). As to the meaning of 'independent medical agency' see PARA 750. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 31 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 30. As to the meanings of 'England' and 'Wales' see PARA 6 note 2. As to the appointment of receivers, managers and liquidators see **COMPANY AND PARTNERSHIP INSOLVENCY**.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 31(2)(b).

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 31(2)(c). As to trustees in bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 316 et seq.

7 As to the Commission for Healthcare Audit and Inspection see PARA 552.

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 31(1)(a).

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 31(1)(b). As to the meaning of 'registered manager' see PARA 763 note 2.

10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 31(1)(c).

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (4) NOTICES/791. Death of registered person.

### **791. Death of registered person.**

If more than one person<sup>1</sup> is registered in respect of an establishment<sup>2</sup> or independent medical agency<sup>3</sup>, and a registered person<sup>4</sup> dies, the surviving registered person must without delay notify the Commission for Healthcare Audit and Inspection<sup>5</sup> of the death in writing<sup>6</sup>. If only one person is registered in respect of an establishment or independent medical agency, and he dies, his personal representatives<sup>7</sup> must notify the Commission in writing without delay of the death<sup>8</sup>, and within 28 days of their intentions regarding the future running of the establishment or independent medical agency<sup>9</sup>.

The personal representatives of the deceased registered provider<sup>10</sup> may carry on the establishment or independent medical agency without being registered in respect of it for a period not exceeding 28 days<sup>11</sup>, and for any further period as may be determined by the Commission for Healthcare Audit and Inspection<sup>12</sup>. The personal representatives must appoint a person to take full-time day to day charge of the establishment or independent medical agency during any such period in which they carry on the establishment or agency without being registered in respect of it<sup>13</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to the meaning of 'establishment' see PARA 748 note 3.

3 As to the meaning of 'independent medical agency' see PARA 750.

4 As to the meaning of 'registered person' see PARA 764 note 14.

5 As to the Commission for Healthcare Audit and Inspection see PARA 552.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32(1). As to the meaning of 'writing' see PARA 7 note 2. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 32 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 31. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

7 As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32(2)(a).

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32(2)(b).

- 10 As to the meaning of 'registered provider' see PARA 763 note 1.
- 11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32(3)(a).
- 12 See Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32(3)(b). The Commission may extend the period by such further period, not exceeding one year, as it may determine, and must notify any such determination to the personal representatives in writing: reg 32(4).
- 13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 32(5).

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (5) REQUIREMENTS RELATING TO SPECIFIC SERVICES/(i) Independent Hospitals/792. Pathology services, resuscitation and treatment of children.

## **(5) REQUIREMENTS RELATING TO SPECIFIC SERVICES**

### **(i) Independent Hospitals**

#### **792. Pathology services, resuscitation and treatment of children.**

The registered person<sup>1</sup> of an independent hospital<sup>2</sup> must ensure that: (1) an adequate range of pathology services is available to meet the needs of the independent hospital<sup>3</sup>; (2) those services are provided to an appropriate standard<sup>4</sup>; (3) appropriate arrangements are made for the collection, and (where pathology services are provided outside the hospital) transportation of pathology specimens<sup>5</sup>; and (4) the patient<sup>6</sup> from whom a specimen was taken, and such specimen, is identifiable at all times<sup>7</sup>.

The registered person must prepare and implement a written<sup>8</sup> statement of the policies to be applied and the procedures to be followed in the hospital in relation to resuscitation of patients, and must review such statement annually<sup>9</sup>. The registered person must ensure that the policies and procedures so implemented: (a) take proper account of the right of all patients who have the capacity<sup>10</sup> to do so to give or withhold consent to treatment<sup>11</sup>; (b) take proper account of valid and applicable advance decisions<sup>12</sup> made by patients<sup>13</sup>; (c) are available on request to every patient and any person acting on behalf of a patient<sup>14</sup>; and (d) are communicated to and understood by all employees<sup>15</sup> and all medical practitioners<sup>16</sup> with practising privileges<sup>17</sup> who may be involved in decisions about resuscitation of a patient<sup>18</sup>.

The registered person must ensure that, where a child<sup>19</sup> is treated in an independent hospital: (i) he is treated in accommodation which is separate from accommodation in which adult<sup>20</sup> patients are treated<sup>21</sup>; (ii) particular medical, physical, psychological, social, educational and supervision needs arising from his age are met<sup>22</sup>; (iii) his treatment is provided by persons who have appropriate qualifications, skills and experience in the treatment of children<sup>23</sup>; (iv) his parents<sup>24</sup> are kept fully informed of his condition and so far as is practicable consulted about all aspects of his treatment, except where the child is himself competent to consent to treatment and does not wish his parents to be so informed and consulted<sup>25</sup>.

It is an offence to fail to comply with any of these provisions<sup>26</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, regs 34-36 apply to independent hospitals of the following kinds: (1) those defined in the Care Standards Act 2000 s 2(3)(a)(i) (see PARA 748) except establishments excepted by the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 3(2) (see PARA 748) (reg 33(1)(a)); and (2) those in which medical treatment, including cosmetic surgery, is provided under anaesthesia or sedation (reg 33(1)(b)). Regulation 34 also applies to any establishment or independent medical agency which provides pathology services: reg 33(2). As to the meaning of 'independent hospital' see PARA 748. As to the meaning of 'establishment' see PARA 748 note 3. As to the meaning of 'medical' see PARA 748 note 6. As to the meaning of 'treatment' see PARA 748 note 3. As to the meaning of 'independent medical agency' see PARA 750. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to regs 33-36

in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, regs 32-35. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 34(a).

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 34(b).

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 34(c).

6 As to the meaning of 'patient' see PARA 748 note 9.

7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 34(d).

8 As to the meaning of 'written' see PARA 7 note 2.

9 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 35(1). The registered person must review the operation of each such policy and procedure at intervals of not more than three years and, where appropriate, revise those policies and procedures: see reg 9(4); and PARA 772.

10 As to references to a person's capacity see PARA 772 note 22.

11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 35(2)(a) (reg 35(2)(a) amended, (2)(aa) added, by SI 2007/1898). As to a patient's consent to treatment see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 198 et seq.

12 If made under the Mental Capacity Act 2005: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 652 et seq.

13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 35(2)(aa) (as added: see note 11).

14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 35(2)(b).

15 As to the meaning of 'employee' see PARA 749 note 14.

16 As to the meaning of 'medical practitioner' see PARA 749 note 10.

17 As to the meaning of 'practising privileges' see PARA 772 note 16.

18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 35(2)(c).

19 As to the meaning of 'child' see PARA 756 note 13.

20 As to the meaning of 'adult' see PARA 766 note 9.

21 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 36(a).

22 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 36(b).

23 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 36(c).

24 'Parent', in relation to a child, includes any person who is not a parent of his but who has parental responsibility for him: Care Standards Act 2000 s 121(1). 'Parental responsibility' has the same meaning as in the Children Act 1989 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134): Care Standards Act 2000 s 121(1). As to the meaning of 'person' see PARA 17 note 2.

25 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 36(d). As to the competence of children to consent to treatment see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 201.

26 See PARA 801.

## UPDATE

### 748-804 Registration of independent health services

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (5) REQUIREMENTS RELATING TO SPECIFIC SERVICES/(i) Independent Hospitals/793. Surgical procedures.

### **793. Surgical procedures.**

Where medical treatment<sup>1</sup> (including cosmetic surgery) is provided under anaesthesia or sedation in an independent hospital<sup>2</sup>, the registered person<sup>3</sup> must ensure that the facilities and treatment meet certain standards<sup>4</sup>. The registered person must ensure that before a patient<sup>5</sup> who has the capacity<sup>6</sup> to do so consents to any surgery offered by the independent hospital, he has received clear and comprehensive information about the procedure and any risks associated with it<sup>7</sup>. In the case of a patient who lacks the capacity to consent to surgery, the information must, wherever possible, be provided to his representatives<sup>8</sup>; and the registered person must take proper account of any valid and applicable advance decisions<sup>9</sup> made by the patient<sup>10</sup>.

It is an offence to fail to comply with any of these provisions<sup>11</sup>.

1 As to the meanings of 'medical' and 'treatment' see PARA 748 note 3.

2 As to the meaning of 'independent hospital' see PARA 748.

3 As to the meaning of 'registered person' see PARA 764 note 14.

4 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 37(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 37 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 36. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

5 As to the meaning of 'patient' see PARA 748 note 9.

6 As to references to a person's capacity see PARA 772 note 22.

7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 37(2) (reg 37(2), (3) amended, (4) added, by SI 2007/1898). As to a patient's consent to treatment see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 198 et seq.

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 37(3) (as amended: see note 7).

9 Ie made under the Mental Capacity Act 2005: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 652 et seq.

10 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 37(4) (as added: see note 7).

11 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (5) REQUIREMENTS RELATING TO SPECIFIC SERVICES/(i) Independent Hospitals/794. Dental treatment under general anaesthesia.

#### **794. Dental treatment under general anaesthesia.**

Where the treatment<sup>1</sup> provided in an independent hospital<sup>2</sup> includes dental treatment under general anaesthesia, the registered person<sup>3</sup> must ensure that: (1) the dentist and any employees<sup>4</sup> assisting him are suitably qualified, skilled and experienced to deal with any emergency which occurs during or as a result of the general anaesthesia or treatment<sup>5</sup>; and (2) adequate facilities, drugs and equipment are available to deal with any such emergency<sup>6</sup>.

It is an offence to fail to comply with any of these provisions<sup>7</sup>.

1 As to the meaning of 'treatment' see PARA 748 note 3.

2 As to the meaning of 'independent hospital' see PARA 748.

3 As to the meaning of 'registered person' see PARA 764 note 14.

4 As to the meaning of 'employee' see PARA 749 note 14.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 38(a). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 38 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 37. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 38(b).

7 See PARA 801.

### **UPDATE**

#### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (5) REQUIREMENTS RELATING TO SPECIFIC SERVICES/(i) Independent Hospitals/795. Obstetric services.

### **795. Obstetric services.**

Where an independent hospital<sup>1</sup> provides obstetric services and, in connection with childbirth, medical<sup>2</sup> services<sup>3</sup>, the registered person<sup>4</sup> must appoint a head of midwifery services who is responsible for managing the provision of midwifery services<sup>5</sup> in an independent hospital and, except in cases where obstetric services are provided in the hospital primarily by midwives, a head of obstetric services whose name is included in the specialist medical register in respect of a specialty in obstetrics<sup>6</sup> and who is responsible for managing the provision of obstetric services<sup>7</sup>. The registered person must ensure that the health care professional<sup>8</sup> who is primarily responsible for caring for pregnant women and assisting at childbirth is a midwife, an appropriately qualified general practitioner<sup>9</sup>, or a medical practitioner<sup>10</sup> whose name is included in the specialist medical register in respect of a specialty in obstetrics<sup>11</sup>. Where obstetric services are provided in an independent hospital primarily by midwives, the registered person must ensure that the services of a medical practitioner who is competent to deal with obstetric emergencies are available at all times<sup>12</sup>. The registered person must ensure that a health care professional who is competent to undertake resuscitation of a new born baby is available in the hospital at all times and that his skills are regularly reviewed and, if necessary, updated<sup>13</sup>.

The registered person must ensure that: (1) any death of a patient<sup>14</sup> in an independent hospital during, or as a result of, pregnancy or childbirth<sup>15</sup>; and (2) any still-birth<sup>16</sup> or neonatal death<sup>17</sup> in an independent hospital<sup>18</sup>, are reported to any person<sup>19</sup> undertaking an inquiry into such deaths on behalf of the Secretary of State<sup>20</sup>. The registered person must also ensure that facilities and arrangements are available and in place to cover certain circumstances which may arise during or immediately after childbirth<sup>21</sup>. The registered person must ensure that a maternity record is maintained for each patient receiving obstetric services and each child born in the hospital<sup>22</sup>.

It is an offence to fail to comply with any of these provisions<sup>23</sup>.

1 As to the meaning of 'independent hospital' see PARA 748.

2 As to the meaning of 'medical' see PARA 748 note 6.

3 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 39(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to regs 39, 40 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, regs 38, 39. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 As to the meaning of 'registered person' see PARA 764 note 14.

5 As to the regulation of the profession of midwifery see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 691 et seq.

6 As to specialist medical registers see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 39 et seq.

- 7 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 39(2).
- 8 As to the meaning of 'health care professional' see PARA 762 note 14.
- 9 As to the meaning of 'general practitioner' see PARA 748 note 13.
- 10 As to the meaning of 'medical practitioner' see PARA 749 note 10.
- 11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 39(3).
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 39(4).
- 13 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 39(5).
- 14 As to the meaning of 'patient' see PARA 748 note 9.
- 15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 40(1)(a).
- 16 'Still-born child' means a child which has issued forth from its mother after the twenty-fourth week of pregnancy and which did not at any time after being completely expelled from its mother breathe or show any other signs of life, and the expression 'still-birth' must be construed accordingly: Births and Deaths Registration Act 1953 s 41 (definition amended by the Still-Birth (Definition) Act 1992 s 1(1)); definition applied by the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 40(6).
- 17 'Neonatal death' means the death of a child before the end of the period of 28 days beginning with the date of the child's birth: Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 40(6). As to the meaning of 'child' see PARA 756 note 13.
- 18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 40(1)(b).
- 19 As to the meaning of 'person' see PARA 17 note 2.
- 20 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 40(1). As to the Secretary of State see PARA 6 note 8.
- 21 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 40(2)-(4).
- 22 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 40(5).



23 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (5) REQUIREMENTS RELATING TO SPECIFIC SERVICES/(i) Independent Hospitals/796. Termination of pregnancies.

### **796. Termination of pregnancies.**

In the case of an independent hospital<sup>1</sup> in which termination of pregnancies takes place<sup>2</sup>, the registered person<sup>3</sup> must ensure that no patient<sup>4</sup> is admitted to the hospital for termination of a pregnancy, and that no fee is demanded or accepted from a patient in respect of a termination, unless two certificates of opinion<sup>5</sup> have been received in respect of the patient<sup>6</sup>. Limits are imposed as to when a termination of a pregnancy may be undertaken<sup>7</sup>.

The registered person must ensure that a register of patients undergoing termination of a pregnancy in the hospital is maintained<sup>8</sup>, and that a record is maintained of the total numbers of terminations undertaken in the hospital<sup>9</sup>. The registered person must ensure that notice in writing<sup>10</sup> is sent to the Chief Medical Officer of the Department of Health<sup>11</sup> of each termination of pregnancy which takes place in the hospital<sup>12</sup>. If the registered person receives information concerning the death of a patient who has undergone termination of a pregnancy in the hospital during the period of 12 months<sup>13</sup> ending on the date on which the information is received<sup>14</sup>, and has reason to believe that the patient's death may be associated with the termination<sup>15</sup>, he must give notice in writing to the Commission for Healthcare Audit and Inspection<sup>16</sup> of that information, within the period of 14 days beginning on the day on which the information is received<sup>17</sup>. The registered person must prepare and implement appropriate procedures in the hospital to ensure that foetal tissue is treated with respect<sup>18</sup>.

It is an offence to fail to comply with any of these provisions<sup>19</sup>.

1 As to the meaning of 'independent hospital' see PARA 748.

2 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 41 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 40. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

3 As to the meaning of 'registered person' see PARA 764 note 14.

4 As to the meaning of 'patient' see PARA 748 note 9.

5 'Certificate of opinion' means a certificate required by regulations made under the Abortion Act 1967 s 2(1) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 209): Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(11).

6 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(2). The registered person must ensure that a certificate of opinion in respect of a patient undergoing termination of a pregnancy is completed and included with the patient's record, within the meaning of reg 21 (see PARA 778): reg 41(3).

7 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(4), (5).

8 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(6).

9 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(7).

10 As to the meaning of 'writing' see PARA 7 note 2.

11 As to the Chief Medical Officer of the Department of Health see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 465.

12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(8).

13 As to the meaning of 'month' see PARA 28 note 16.

14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(9)(a).

15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(9)(b).

16 As to the Commission for Healthcare Audit and Inspection see PARA 552.

17 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(9).

18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 41(10). The registered person must review the operation of such procedures at intervals of not more than three years and, where appropriate, prepare and implement revised procedures: see reg 9(4); and PARA 772.

19 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (5) REQUIREMENTS RELATING TO SPECIFIC SERVICES/(i) Independent Hospitals/797. Use of certain techniques or technology.

### **797. Use of certain techniques or technology.**

The registered person<sup>1</sup> must ensure that no laser or intense light source of certain descriptions, is used in or for the purposes of an independent hospital<sup>2</sup> unless that hospital has in place a professional protocol drawn up by a trained and experienced medical practitioner<sup>3</sup> or dentist<sup>4</sup> from the relevant discipline in accordance with which treatment<sup>5</sup> is to be provided, and is so provided<sup>6</sup>. The registered person must ensure that such a laser or intense light source is used in or for the purposes of the hospital only by a person who has undertaken appropriate training and has demonstrated an understanding of its use<sup>7</sup>.

It is an offence to fail to comply with any of these provisions<sup>8</sup>.

1 As to the meaning of 'registered person' see PARA 764 note 14.

2 As to the meaning of 'independent hospital' see PARA 748.

3 As to the meaning of 'medical practitioner' see PARA 749 note 10.

4 'Dentist' means a person registered in the dentists register under the Dentists Act 1984 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 417): Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 2(1).

5 As to the meaning of 'treatment' see PARA 748 note 3.

6 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 42(1). The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 42 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 41. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

7 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 42(2).

8 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to

the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (5) REQUIREMENTS RELATING TO SPECIFIC SERVICES/(i) Independent Hospitals/798. Mental health services.

### **798. Mental health services.**

The following provisions apply to independent hospitals<sup>1</sup> of the following kinds: (1) those, the main purpose of which, is to provide medical<sup>2</sup> or psychiatric treatment<sup>3</sup> for mental disorder<sup>4</sup>; and (2) those in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983<sup>5</sup>.

The statement of policies and procedures which is to be prepared and implemented by the registered person<sup>6</sup> must include policies and procedures in relation to assessment of a patient's<sup>7</sup> propensity to violence and self harm<sup>8</sup>; and the registered person must in particular prepare and implement a suicide protocol in the hospital<sup>9</sup>. The registered person must prepare and implement a written<sup>10</sup> policy setting out: (1) how disturbed behaviour exhibited by a patient is to be managed<sup>11</sup>; (2) permitted measures of restraint and the circumstances in which they may be used<sup>12</sup>; (3) requirements for employees<sup>13</sup> to report serious incidents of violence or self harm, including guidance as to how those incidents should be classified<sup>14</sup>; and (4) the procedure for review of such incidents and determination of the action which is to be taken subsequently<sup>15</sup>. The registered person must prepare and implement written policies and procedures in the hospital in relation to patients receiving visitors<sup>16</sup>.

The registered person must ensure that any records which are required to be made<sup>17</sup>, and which relate to the detention or treatment of a patient in an independent hospital, are kept for a period of not less than five years beginning on the date on which the person to whom they relate ceases to be a patient in the hospital<sup>18</sup>.

It is an offence to fail to comply with any of these provisions<sup>19</sup>.

1 As to the meaning of 'independent hospital' see PARA 748.

2 As to the meaning of 'medical' see PARA 748 note 6.

3 As to the meaning of 'treatment' see PARA 748 note 3.

4 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 43(a). As to the meaning of 'mental disorder' see PARA 748 note 8. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to regs 43-47 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, regs 42-46. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

5 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 43(b). As to persons liable to be detained under the Mental Health Act 1983 see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 460 et seq.

6 In accordance with the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9(1)(e): see PARA 772. As to the meaning of 'registered person' see PARA 764 note 14.

- 7 As to the meaning of 'patient' see PARA 748 note 9.
- 8 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 44(1).
- 9 See the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 44(2).
- 10 As to the meaning of 'written' see PARA 7 note 2.
- 11 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 45(a).
- 12 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 45(b).
- 13 As to the meaning of 'employee' see PARA 749 note 14.
- 14 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 45(c).
- 15 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 45(d). The registered person must review the operation of such policy at intervals of not more than three years and, where appropriate, prepare and implement a revised policy: see reg 9(4); and PARA 772.
- 16 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 46. The registered person must review the operation of such policies and procedures at intervals of not more than three years and, where appropriate, prepare and implement revised policies and procedures: see reg 9(4); and PARA 772.
- 17 Ie under the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983, SI 1983/893: see **MENTAL HEALTH**.
- 18 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 47.
- 19 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **798 Mental health services**

NOTE 17--SI 1983/893 replaced: Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, SI 2008/1184; Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, SI 2008/2439.



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## **(ii) Independent Clinics**

### **799. Antenatal care.**

Where an independent clinic<sup>1</sup> provides antenatal care to patients<sup>2</sup>, the registered person<sup>3</sup> must ensure that the health care professional<sup>4</sup> who is primarily responsible for providing that care is a midwife<sup>5</sup>, an appropriately qualified general practitioner<sup>6</sup>, or a medical practitioner<sup>7</sup> with a specialist qualification in obstetrics<sup>8</sup>. It is an offence to fail to comply with any of these provisions<sup>9</sup>.

1 As to the meaning of 'independent clinic' see PARA 749.

2 As to the meaning of 'patient' see PARA 748 note 9.

3 As to the meaning of 'registered person' see PARA 764 note 14.

4 As to the meaning of 'health care professional' see PARA 762 note 14.

5 As to the regulation of the profession of midwifery see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 691 et seq.

6 As to the meaning of 'general practitioner' see PARA 748 note 13.

7 As to the meaning of 'medical practitioner' see PARA 749 note 10.

8 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 48. As to the registration of specialist medical qualifications see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 39 et seq. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 48 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 47. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

9 See PARA 801.

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and

managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (6) OFFENCES/800. Offences relating to registration.

## **(6) OFFENCES**

### **800. Offences relating to registration.**

If a person<sup>1</sup> registered<sup>2</sup> in respect of an establishment<sup>3</sup> or independent medical agency<sup>4</sup> fails, without reasonable excuse, to comply with any condition for the time being in force<sup>5</sup> in respect of the establishment or agency, he is guilty of an offence<sup>6</sup>.

Any person who, in an application for registration<sup>7</sup> in respect of an establishment or independent medical agency or for the variation of any condition<sup>8</sup> in force in relation to his registration, knowingly makes a statement which is false or misleading in a material respect is guilty of an offence<sup>9</sup>.

If default is made in complying with the requirement to affix a certificate of registration<sup>10</sup> in a conspicuous place in the establishment or at the independent medical agency, any person registered in respect of the establishment or agency is guilty of an offence<sup>11</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 As to registration see PARA 759.

3 As to the meaning of 'establishment' see PARA 748 note 18.

4 As to the meaning of 'independent medical agency' see PARA 750.

5 Ie by virtue of the Care Standards Act 2000 Pt II (ss 11-42).

6 Care Standards Act 2000 s 24. The penalty for such offence is, on summary conviction, a fine not exceeding level 5 on the standard scale: s 24. As to the standard scale see PARA 28 note 12. As to proceedings for offences see PARA 803. As to offences by bodies corporate see PARA 804.

7 As to applications for registration see PARA 760.

8 As to applications for variation of conditions see PARA 760.

9 Care Standards Act 2000 s 27(1). The penalty for such offence is, on summary conviction, a fine not exceeding level 4 on the standard scale: see s 27(2).

10 Ie the requirement under the Care Standards Act 2000 s 28(1): see PARA 760 note 8.

11 Care Standards Act 2000 s 28(2). The penalty for such offence is, on summary conviction, a fine not exceeding level 2 on the standard scale: s 28(2).

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **800-804 Offences**

As to offences in relation to registration in England, see now the Health and Social Care Act 2008 ss 1-44, and as to enforcement by the Care Quality Commission, including the issue of penalty notices for fixed penalty offences, see ss 86-92; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A.7.

### **800 Offences relating to registration**

TEXT AND NOTES--If a person who is registered under the Care Standards Act 2000 Pt II (ss 11-42) in respect of an establishment or agency carries on or (as the case may be) manages the establishment or agency while the person's registration is suspended, the person is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 24A (added by the Health and Social Care Act 2008 Sch 5 para 22).

As to the power of the Welsh Ministers to issue penalty notices, see the Care Standards Act 2000 ss 30ZA, ZB (added by the Health and Social Care Act 2008 Sch 5 para 25).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (6) OFFENCES/801. Contravention of regulations.

### **801. Contravention of regulations.**

Regulations<sup>1</sup> under the provisions relating to independent health services<sup>2</sup> may provide that a contravention of or failure to comply with any specified provision of the regulations is an offence<sup>3</sup>.

A contravention, or failure to comply with, any of the provisions of the regulations relating to the statement of purpose<sup>4</sup>, the patients' guide<sup>5</sup>, the review of the statement and guide<sup>6</sup>, the notification of offences<sup>7</sup>, the quality of treatment<sup>8</sup>, the care and welfare of patients<sup>9</sup>, service provision, premises, management and the giving of certain notices<sup>10</sup>, and the provision of specific services<sup>11</sup>, is an offence<sup>12</sup>.

Where the Commission for Healthcare Audit and Inspection<sup>13</sup> considers that the registered person<sup>14</sup> has contravened or failed to comply with any of the provisions of such regulations, it may serve a notice on the registered person specifying: (1) in what respect in its opinion the registered person has contravened or is contravening any of the regulations, or has failed or is failing to comply with the requirements of any of the regulations<sup>15</sup>; (2) where it is practicable for the registered person to take action for the purpose of complying with any of those regulations, the action which, in the opinion of the Commission, the registered person should take for that purpose<sup>16</sup>; (3) the period, not exceeding three months<sup>17</sup>, within which the registered person should take any such action<sup>18</sup>; (4) the period, not exceeding one month, within which the registered person may make representations to the Commission about the notice<sup>19</sup>.

The Commission for Healthcare Audit and Inspection must not bring proceedings against a person<sup>20</sup> in respect of any contravention or failure to comply with such regulations unless: (a) he is a registered person<sup>21</sup>; (b) notice has been given to him in accordance with heads (1) to (4) above<sup>22</sup>; (c) the period specified in the notice, within which the registered person may make representations to the Commission, has expired<sup>23</sup>; and (d) in a case where<sup>24</sup> the notice specifies any action that is to be taken within a specified period, the period has expired and the action has not been taken within that period<sup>25</sup>.

1 As to the meaning of 'regulations' see PARA 753 note 4.

2 Ie under the Care Standards Act 2000 Pt II (ss 11-42).

3 Care Standards Act 2000 s 25(1). A person guilty of an offence under the regulations is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale: s 25(2). As to the meaning of 'person' see PARA 17 note 2. As to the standard scale see PARA 28 note 12.

4 Ie the provisions of the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 6: see PARA 769.

5 Ie the provisions of the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 7: see PARA 770.

6    In the provisions of the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 9: see PARA 772.

7    In the provisions of the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 14: see PARA 764.

8    In the provisions of the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 15: see PARA 773.

9    In the provisions of the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 16(1)-(4): see PARA 774.

10   In the provisions of the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, regs 17-30: see PARAS 775-789.

11   In the provisions of the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, regs 34-42 (see PARAS 792-797), regs 44-48 (see PARAS 798-799) and reg 49 (see PARA 778).

12   Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(1) (amended by SI 2002/865). As to proceedings for offences see PARA 803. As to offences by bodies corporate see PARA 804. The Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, extend to England only: reg 1(2). As to the equivalent provision to reg 51 in relation to Wales see the Private and Voluntary Health Care (Wales) Regulations 2002, SI 2002/325, reg 49. As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

13   As to the Commission for Healthcare Audit and Inspection see PARA 552.

14   As to the meaning of 'registered person' see PARA 764 note 14. See also note 21.

15   Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(3)(a). As to the service of notices and documents see PARA 754.

16   Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(3)(b) (reg 51(3)(b), (c) substituted, (3)(d) added, by SI 2002/865).

17   As to the meaning of 'month' see PARA 28 note 16.

18   Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(3)(c) (as substituted: see note 16).

19   Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(3)(d) (as added: see note 16).

20 In any such proceedings the national minimum standards must be taken into account: see the Care Standards Act 2000 s 23(4)(d); and PARA 768.

21 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(2)(a). However, the Commission may bring proceedings against a person who was once, but no longer is a registered person, in respect of a failure to comply with reg 21 (see PARA 778) and for this purpose, references in reg 51(2) and (3) (see the text to notes 13-19) to a registered person must be taken to include such a person: reg 51(4).

22 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(2)(b).

23 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(2)(c) (reg 51(2)(c), (d) substituted by SI 2002/865).

24 In accordance with the Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(3)(b): see the text to note 16.

25 Private and Voluntary Health Care (England) Regulations 2001, SI 2001/3968, reg 51(2)(d) (as substituted: see note 23).

## **UPDATE**

### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

### **800-804 Offences**

As to offences in relation to registration in England, see now the Health and Social Care Act 2008 ss 1-44, and as to enforcement by the Care Quality Commission, including the issue of penalty notices for fixed penalty offences, see ss 86-92; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A.7.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (6) OFFENCES/802. False descriptions of establishments and agencies.

## **802. False descriptions of establishments and agencies.**

A person<sup>1</sup> who, with intent to deceive any person: (1) applies any name to premises<sup>2</sup> in England or Wales<sup>3</sup>; or (2) in any way describes such premises or holds such premises out<sup>4</sup>, so as to indicate, or reasonably be understood to indicate, that the premises are an establishment<sup>5</sup> or an independent medical agency<sup>6</sup> of a particular description is guilty of an offence unless registration<sup>7</sup> has been effected in respect of the premises as an establishment or independent medical agency of that description<sup>8</sup>.

No person may, with intent to deceive any person, in any way describe or hold out an establishment or independent medical agency as able to provide any service or do any thing the provision or doing of which would contravene a condition for the time being in force<sup>9</sup> in respect of the establishment or agency<sup>10</sup>.

1 As to the meaning of 'person' see PARA 17 note 2.

2 'Premises' includes an undertaking or organisation: see the Care Standards Act 2000 s 26(2). As to the meaning of 'undertaking' see PARA 750 note 1. As to the meaning of 'organisation' see PARA 762 note 8.

3 Care Standards Act 2000 s 26(1)(a). As to the meanings of 'England' and 'Wales' see PARA 6 note 2.

4 Care Standards Act 2000 s 26(1)(b).

5 As to the meaning of 'establishment' see PARA 748 note 18.

6 As to the meaning of 'independent medical agency' see PARA 750.

7 As to registration see PARA 759.

8 Care Standards Act 2000 s 26(1). The penalty for such offence is, on summary conviction, a fine not exceeding level 5 on the standard scale: s 26(1). As to the standard scale see PARA 28 note 12. As to proceedings for offences see PARA 803. As to offences by bodies corporate see PARA 804.

9 Ie by virtue of the Care Standards Act 2000 Pt II (ss 11-42).

10 Care Standards Act 2000 s 26(3). A person who contravenes this provision is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: s 26(4).

## **UPDATE**



## **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

## **800-804 Offences**

As to offences in relation to registration in England, see now the Health and Social Care Act 2008 ss 1-44, and as to enforcement by the Care Quality Commission, including the issue of penalty notices for fixed penalty offences, see ss 86-92; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A.7.

## **802 False descriptions of establishments and agencies**

TEXT AND NOTES 1-8--If a person's registration has been suspended, the registration is to be treated for the purposes of the Care Standards Act 2000 s 26(1) as if it had not been effected: s 26(1A) (added by the Health and Social Care Act 2008 Sch 5 para 23).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (6) OFFENCES/803. Proceedings for offences.

### **803. Proceedings for offences.**

Proceedings in respect of an offence under the provisions relating to independent health services<sup>1</sup> or regulations made under it<sup>2</sup> must not, without the written consent of the Attorney General<sup>3</sup>, be taken by any person<sup>4</sup> other than: (1) the Commission for Healthcare Audit and Inspection<sup>5</sup>, or, in relation to any functions of the Commission which the Secretary of State<sup>6</sup> is for the time being discharging<sup>7</sup>, the Secretary of State<sup>8</sup>; or (2) the Welsh Ministers<sup>9</sup>.

Proceedings for such an offence may be brought within a period of six months<sup>10</sup> from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings may be brought by virtue of this provision more than three years after the commission of the offence<sup>11</sup>.

1   Ie under the Care Standards Act 2000 Pt II (ss 11-42).

2   As to such offences see PARA 801.

3   As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

4   As to the meaning of 'person' see PARA 17 note 2.

5   As to the Commission for Healthcare Audit and Inspection see PARA 552.

6   As to the Secretary of State see PARA 6 note 8.

7   Ie by virtue of the Care Standards Act 2000 s 113: see PARA 752.

8   See the Care Standards Act 2000 s 29(1)(a) (amended by the Health and Social Care (Community Health and Standards) Act 2003 Sch 9 paras 16, 22).

9   Care Standards Act 2000 s 29(1)(b); Government of Wales Act 2006 Sch 11 para 32. This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6.

10   As to the meaning of 'month' see PARA 28 note 16.

11   Care Standards Act 2000 s 29(2).

**UPDATE****748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

**800-804 Offences**

As to offences in relation to registration in England, see now the Health and Social Care Act 2008 ss 1-44, and as to enforcement by the Care Quality Commission, including the issue of penalty notices for fixed penalty offences, see ss 86-92; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A.7.

**803 Proceedings for offences**

TEXT AND NOTE 10--For 'a period of six months' read 'the permitted period': Care Standards Act 2000 s 29(2) (s 29(2) amended, s 29(3) added by the Health and Social Care Act 2008 Sch 5 para 24(b), (c)). 'The permitted period' means (1) in the case of proceedings brought by the Welsh Ministers, a period of 12 months; (2) in any other case, a period of 6 months: Care Standards Act 2000 s 29(3).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/2. REGISTRATION OF INDEPENDENT HEALTH SERVICES/ (6) OFFENCES/804. Offences by bodies corporate.

#### **804. Offences by bodies corporate.**

Where any offence under the provisions relating to independent health services<sup>1</sup> or regulations made under it<sup>2</sup> is committed by a body corporate<sup>3</sup>, if the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of: (1) any director, manager, or secretary of the body corporate<sup>4</sup>; or (2) any person who was purporting to act in any such capacity<sup>5</sup>, he (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly<sup>6</sup>.

1    le under the Care Standards Act 2000 Pt II (ss 11-42).

2    As to such offences see PARA 801.

3    Care Standards Act 2000 s 30(1).

4    Care Standards Act 2000 s 30(2)(a). The reference to a director, manager or secretary of a body corporate includes a reference: (1) to any other similar officer of the body (s 30(3)(a)); and (2) where the body is a local authority, to any officer or member of the authority (s 30(3)(b)). As to the meaning of 'local authority' see PARA 750 note 1.

5    Care Standards Act 2000 s 30(2)(b).

6    Care Standards Act 2000 s 30(2).

#### **UPDATE**

#### **748-804 Registration of independent health services**

As to the registration of independent health services in England see now the Health and Social Care Act 2008 Pt 1 Chs 1, 2 (ss 1-44), which require all providers and managers of health and adult social care to register with the Care Quality Commission. See further **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A. As to the Care Quality Commission generally see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1011A.

#### **800-804 Offences**

As to offences in relation to registration in England, see now the Health and Social Care Act 2008 ss 1-44, and as to enforcement by the Care Quality Commission, including the issue of penalty notices for fixed penalty offences, see ss 86-92; and **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARA 1001A.7.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/805. Status.

### **3. THE APPOINTMENTS COMMISSION**

#### **(1) ESTABLISHMENT AND MEMBERSHIP**

##### **805. Status.**

A body corporate known as the Appointments Commission is established<sup>1</sup>. The Commission is to have the functions conferred on it by or under the Health Act 2006<sup>2</sup> or any other Act<sup>3</sup>.

The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>4</sup>. The Commission's property is not to be regarded as property of, or property held on behalf of, the Crown<sup>5</sup>.

1 See the Health Act 2006 s 57(1). The Appointments Commission replaces the National Health Service Appointments Commission which is abolished: see s 57(4), (5). Provision is made in relation to the transfer to the Appointments Commission of staff, property, rights and liabilities of the National Health Service Appointments Commission: see s 69, Sch 7. The Appointments Commission is a public authority for the purposes of the Freedom of Information Act 2000: see s 3, Sch 1 Pt VI (amended by the Health Act 2006 Sch 8 para 45(1), (3)); and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583.

2 As to such functions see PARA 820 et seq.

3 Health Act 2006 s 57(2).

4 Health Act 2006 Sch 4 para 1(1). As to the legal status of such bodies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 951 et seq.

5 Health Act 2006 Sch 4 para 1(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/806. The Board.

## **806. The Board.**

The Appointments Commission<sup>1</sup> consists of the following members: the chairman<sup>2</sup>, the prescribed<sup>3</sup> number of non-executive members<sup>4</sup>, the chief executive<sup>5</sup>, and the prescribed number of executive members<sup>6</sup>.

The chairman and non-executive members are appointed by the Secretary of State<sup>7</sup>; and of the non-executive members at least one (but not more than four) must be persons who are also appointed to be health and social care commissioners<sup>8</sup>. Regulations made by the Secretary of State may: (1) prescribe conditions which must be satisfied in relation to a person before he is appointed as chairman or as a non-executive member<sup>9</sup>; (2) make provision as to the circumstances in which a person is disqualified for being the chairman or a non-executive member<sup>10</sup>. The members of the Appointments Commission may appoint one of the non-executive members to be vice-chairman for such period (not exceeding the remainder of his period of office as member<sup>11</sup>) as they specify on making the appointment<sup>12</sup>.

The executive members are to be appointed by the chairman and the non-executive members of the Appointments Commission<sup>13</sup>. The executive members must be employees of the Commission<sup>14</sup>, or persons seconded to the staff of the Commission<sup>15</sup>. A person may not be appointed as an executive member unless he is recommended for appointment by the chief executive<sup>16</sup>.

1 As to the Appointments Commission see PARA 805. Members of the Appointments Commission are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (amended by the Health Act 2006 Sch 8 para 4); and **PARLIAMENT** vol 78 (2010) PARA 905. Members of the Appointments Commission are also disqualified for membership of the Northern Ireland Assembly: see the Northern Ireland Assembly Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (amended by the Health Act 2006 Sch 8 para 5). As to the Northern Ireland Assembly see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 Health Act 2006 Sch 4 para 2(a).

3 'Prescribed' means prescribed by regulations: Health Act 2006 s 71(1). As to the making of regulations see PARA 828.

4 Health Act 2006 Sch 4 para 2(b). The prescribed number of non-executive members is five: Appointments Commission Regulations 2006, SI 2006/2380, reg 2(1).

5 Health Act 2006 Sch 4 para 2(c). As to the chief executive see PARA 807.

6 Health Act 2006 Sch 4 para 2(d). The prescribed number of executive members is four: Appointments Commission Regulations 2006, SI 2006/2380, reg 2(2).

7 Health Act 2006 Sch 4 para 3(1). As to the Secretary of State see PARA 6 note 8.

8 Health Act 2006 Sch 4 para 3(2). As to the appointment of health and social care commissioners see Sch 4 para 10; and PARA 814.

9 Health Act 2006 Sch 4 para 3(3)(a). At the date at which this volume states the law no such regulations had been made.

10 Health Act 2006 Sch 4 para 3(3)(b). As to disqualification for appointment see PARA 809.

11 As to period of office see PARA 808.

12 Health Act 2006 Sch 4 para 6.

13 Health Act 2006 Sch 4 para 5(1).

14 Health Act 2006 Sch 4 para 5(2)(a). As to the appointment of staff see PARA 816.

15 Health Act 2006 Sch 4 para 5(2)(b).

16 Health Act 2006 Sch 4 para 5(3).

## **UPDATE**

### **806 The Board**

NOTE 4--Prescribed number of non-executive members now four: SI 2006/2380 reg 2(1) (amended by SI 2008/2792).

NOTE 12--Prescribed number of executive members now three: SI 2006/2380 reg 2(2) (amended by SI 2008/2792). Health Act 2006 Sch 4 para 6 amended: Health Act 2009 Sch 3 para 8.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/807. The chief executive.

### **807. The chief executive.**

The chief executive of the Appointments Commission<sup>1</sup> is appointed by the chairman and the non-executive members of the Commission<sup>2</sup>. The chief executive must be an employee of the Commission<sup>3</sup>, or a person seconded to the staff of the Commission<sup>4</sup>. Anything authorised or required to be done by the chief executive may be done by any other member of the Commission's staff who is authorised for the purpose by the chief executive (whether generally or specially)<sup>5</sup>.

1 As to the Appointments Commission see PARA 805.

2 Health Act 2006 Sch 4 para 4(1). As to membership of the Appointments Commission see PARA 806. As to the determination of the conditions of service of, and the remuneration and allowances payable to, the chief executive see PARA 808.

3 Health Act 2006 Sch 4 para 4(2)(a). As to the appointment of staff see PARA 816.

4 Health Act 2006 Sch 4 para 4(2)(b).

5 Health Act 2006 Sch 4 para 4(3).



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/808. Terms of appointment.

### **808. Terms of appointment.**

Regulations made by the Secretary of State<sup>1</sup> may make provision as to the terms on which the chairman and non-executive members of the Appointments Commission<sup>2</sup> are to be appointed<sup>3</sup>. The regulations may in particular make provision as to: (1) the period for which they are to hold office<sup>4</sup>; (2) their eligibility for re-appointment<sup>5</sup>; (3) remuneration and allowances<sup>6</sup>; (4) circumstances in which their membership may be suspended or terminated<sup>7</sup>. If a person ceases to hold office as chairman or a non-executive member of the Commission<sup>8</sup>, and the Secretary of State determines that there are special circumstances that make it appropriate for that person to receive compensation<sup>9</sup>, the Secretary of State must pay to that person such compensation as the Secretary of State may determine<sup>10</sup>, or make provision for the payment to or in respect of that person of such pension, allowances or gratuities by way of compensation as the Secretary of State may determine<sup>11</sup>.

Subject to the provisions relating to termination of office<sup>12</sup>, the period of office of the chairman, non-executive members and health and social care commissioners<sup>13</sup> is such period, not exceeding four years, as the Secretary of State specifies on making the appointment<sup>14</sup>. Where the chairman or a non-executive member ceases to hold office on the expiry of his period of office, or on termination of his office<sup>15</sup>, he ceases to be a member of the Commission<sup>16</sup>. Subject to the provisions relating to disqualification for appointment<sup>17</sup>, the chairman and any non-executive member or health and social care commissioner are, on the expiry of their period of office, eligible for re-appointment<sup>18</sup>.

The Commission must determine the conditions of service of<sup>19</sup>, and the remuneration and allowances payable to<sup>20</sup>, the chief executive and the executive members<sup>21</sup>. The chief executive or (as the case may be) an executive member must not take part in a discussion or decision which relates to his own conditions of service<sup>22</sup>, or remuneration or allowances payable to him<sup>23</sup>. If the chief executive or an executive member is a person seconded to the Commission his conditions of service<sup>24</sup>, and remuneration or allowances payable to him<sup>25</sup>, must be determined by agreement between his employer and the Commission<sup>26</sup>.

1 As to the Secretary of State see PARA 6 note 8. As to the making of regulations see PARA 828.

2 As to the Appointments Commission see PARA 805. As to membership of the Appointments Commission see PARA 806.

3 Health Act 2006 Sch 4 para 7(1). As to the provision made see the text to notes 12-18.

4 Health Act 2006 Sch 4 para 7(2)(a).

5 Health Act 2006 Sch 4 para 7(2)(b).

6 Health Act 2006 Sch 4 para 7(2)(c).

- 7 Health Act 2006 Sch 4 para 7(2)(d).
- 8 Health Act 2006 Sch 4 para 7(3)(a).
- 9 Health Act 2006 Sch 4 para 7(3)(b).
- 10 Health Act 2006 Sch 4 para 7(4)(a).
- 11 Health Act 2006 Sch 4 para 7(4)(b).
- 12 Ie subject to the Appointments Commission Regulations 2006, SI 2006/2380, reg 7: see PARA 810.
- 13 As to health and social care commissioners see PARA 814.
- 14 Appointments Commission Regulations 2006, SI 2006/2380, reg 4(1).
- 15 Ie under the Appointments Commission Regulations 2006, SI 2006/2380, reg 7: see PARA 810.
- 16 Appointments Commission Regulations 2006, SI 2006/2380, reg 4(2).
- 17 Ie subject to the Appointments Commission Regulations 2006, SI 2006/2380, reg 5: see PARA 809.
- 18 Appointments Commission Regulations 2006, SI 2006/2380, reg 4(3).
- 19 Health Act 2006 Sch 4 para 8(1)(a).
- 20 Health Act 2006 Sch 4 para 8(1)(b).
- 21 Health Act 2006 Sch 4 para 8(1). As to the chief executive see PARA 807.
- 22 Health Act 2006 Sch 4 para 8(2)(a).
- 23 Health Act 2006 Sch 4 para 8(2)(b).
- 24 Health Act 2006 Sch 4 para 8(3)(a).

25 Health Act 2006 Sch 4 para 8(3)(b).

26 Health Act 2006 Sch 4 para 8(3).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/809. Disqualification for appointment.

### **809. Disqualification for appointment.**

A person is disqualified for appointment as the chairman or as a non-executive member of the Appointments Commission<sup>1</sup> or a health and social care commissioner<sup>2</sup> if<sup>3</sup>:

- 564 (1) he has, within the preceding five years, been convicted<sup>4</sup> in the United Kingdom<sup>5</sup> of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence<sup>6</sup>, and been sentenced to a sentence of imprisonment (whether suspended or not)<sup>7</sup>, and neither the conviction has been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment (whether suspended or not) on appeal<sup>8</sup>;
- 565 (2) he is the subject of a bankruptcy restrictions order or interim bankruptcy restrictions order<sup>9</sup>;
- 566 (3) he has had a sequestration of his estate awarded and has not been discharged<sup>10</sup>;
- 567 (4) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body<sup>11</sup>;
- 568 (5) he: (a) is the subject of a national NHS disqualification<sup>12</sup>; (b) was refused nomination or approval to fill a vacancy for a medical practitioner<sup>13</sup> and was not subsequently nominated or approved or included in a primary care list<sup>14</sup>; (c) has been refused admission to a primary care list<sup>15</sup> and has not subsequently been included in a primary care list<sup>16</sup>; (d) is conditionally included in a primary care list<sup>17</sup>; (e) has been removed from a primary care list<sup>18</sup> and has not subsequently been included in such a list<sup>19</sup>; (f) is contingently removed from a primary care list<sup>20</sup>; or (g) is<sup>21</sup> suspended from a primary care list or treated as so suspended<sup>22</sup>;
- 569 (6) he is a chairman or a member of a strategic health authority, a special health authority, a primary care trust, or a local health board<sup>23</sup>;
- 570 (7) he is a chairman or a director of an NHS trust<sup>24</sup>;
- 571 (8) he is a chairman or a non-executive director of an NHS foundation trust<sup>25</sup>;
- 572 (9) he is chairman or a member of an executive committee<sup>26</sup>;
- 573 (10) he is a person whose tenure of office as the chairman or as a member, director or governor of a health service body has been terminated on the grounds that: (a) it was not in the interests of, or conducive to the good management, of the health service body or the health service<sup>27</sup> that he should continue to hold that office<sup>28</sup>; (b) he failed, without reasonable cause, to attend any meeting of that health service body for a period of three months or more<sup>29</sup>; (c) he failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which he had a pecuniary interest<sup>30</sup>;
- 574 (11) he holds any paid appointment or office with a health service body<sup>31</sup>;
- 575 (12) he holds an appointment as a special trustee for a health service hospital<sup>32</sup>, a trustee for an NHS trust or NHS foundation trust<sup>33</sup>, or a trustee for a primary care trust<sup>34</sup>;
- 576 (13) he is the chairman or another member of the Independent Regulator of NHS Foundation Trusts<sup>35</sup>;
- 577 (14) he is subject to a directors disqualification order<sup>36</sup> or to an order<sup>37</sup> made in respect of a failure to pay under a county court administration order<sup>38</sup>;

- 578 (15) he has been removed: (a) from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he, by his conduct, contributed to or facilitated<sup>39</sup>; or (b) in Scotland<sup>40</sup>, from being concerned in the management or control of any charitable body<sup>41</sup>;
- 579 (16) he has been removed as a director, trustee or committee member of a registered social landlord<sup>42</sup>.

A person who is disqualified under head (4), (15) or (16) above may, after the expiry of two years beginning on the date on which he was dismissed or removed, apply in writing<sup>43</sup> to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification is to cease<sup>44</sup>. However, where the Secretary of State refuses an application to remove a disqualification, no further application may be made by that person until the expiry of the period of two years beginning with the date of the application, and this provision applies to any subsequent application<sup>45</sup>.

Where a person is disqualified under head (10) above, the disqualification ceases on the expiry of the period of two years beginning on the date of the termination of his tenure of office or such longer period as the Secretary of State specifies when terminating his period of office, but the Secretary of State may, on application being made to him by that person, reduce the period of disqualification<sup>46</sup>.

1 As to the Appointments Commission see PARA 805. As to membership of the Appointments Commission see PARA 806.

2 As to health and social care commissioners see PARA 814.

3 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1). This provision is expressed to be subject to reg 6: see the text to notes 43-46.

4 For these purposes, the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted: Appointments Commission Regulations 2006, SI 2006/2380, reg 5(2).

5 As to the meaning of 'United Kingdom' see PARA 15 note 8.

6 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(a)(i).

7 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(a)(ii). 'Sentence of imprisonment' does not include a committal in default of payment of any sum of money, for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone: reg 1(2).

8 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(a).

9 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(b). As to bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

10 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(c).

11 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(d). For these purposes, a person must not be treated as having been in paid employment by reason only of his having been: (1) the chairman or a non-executive director of an NHS trust; (2) the chairman, or a governor or non-executive director, of an NHS foundation trust; or (3) in the case of any other health service body, the chairman or a non-officer member of the body: reg 5(3). 'Health service body' means: (a) a strategic health authority, special health authority, primary care trust, local health board, NHS trust or NHS foundation trust; (b) a health board or special health board constituted under the National Health Service (Scotland) Act 1978 s 2, or the Scottish dental practice board, the common service agency for the Scottish Health Service or an NHS trust constituted under, respectively, ss 4, 10 or 12A of that Act; (c) the Secretary of State; (d) the Commission for Healthcare Audit and Inspection; (e) the Dental Practice Board constituted under the National Health Service Act 1977 s 37(1) (repealed); (f) the Health Protection Agency; (g) the Independent Regulator of NHS Foundation Trusts; (h) the Welsh Ministers; (i) the Wales Centre for Health; (j) the Northern Ireland Central Services Agency for Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14); (k) a special health and social services agency established under the Health and Personal Services (Special Agencies) (Northern Ireland) Order 1990, SI 1990/247 (NI 3); (l) a health and social services board established under the Health and Personal Social Services (Northern Ireland) Order 1972, SI 1972/1265 (NI 14); (m) a health and social services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991, SI 1991/194 (NI 1); (n) the Department of Health, Social Services and Public Safety for Northern Ireland; (o) a body in relation to which a direction has been given under the Health Act 2006 s 58 (see PARA 820), s 60 (see PARA 821) or s 61 (see PARA 822); or (p) a body in relation to which arrangements providing for the Appointments Commission to assist in the exercise of any power relating to appointment of the body's chairman, or any non-executive member of the body, have been entered into under s 63(4) (see PARA 824) and remain in force: Appointments Commission Regulations 2006, SI 2006/2380, reg 1(2), (3); Government of Wales Act 2006 Sch 11 para 32. As to strategic health authorities see PARA 94 et seq. As to the special health authorities see PARA 136. As to primary care trusts see PARA 111. As to local health boards see PARA 74. As to NHS trusts see PARA 155. As to NHS foundation trusts see PARA 174. As to the Secretary of State see PARA 6 note 8. As to the Commission for Healthcare Audit and Inspection see PARA 552. As to the Health Protection Agency see PARA 213. As to the Independent Regulator of NHS Foundation Trusts see PARA 188. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6. As to the Wales Centre for Health see PARA 595.

12 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(e)(i). 'National NHS disqualification' means: (1) a decision made by the Family Health Services Appeal Authority under the National Health Service Act 1977 s 49N (repealed) or the National Health Service Act 2006 s 159 (see PARA 402) or under regulations corresponding to those sections made under the National Health Service Act 1977 s 28X(4) (repealed) or the National Health Service Act 2006 s 91(3) (see PARA 248) or 106(3) (see PARA 283); or (2) a decision by the NHS tribunal which is treated as a national disqualification by the Family Health Services Appeal Authority by virtue of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001, SI 2001/3744, reg 6(4)(b) or the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002, SI 2002/1920, reg 6(4)(b): Appointments Commission Regulations 2006, SI 2006/2380, reg 1(2); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4). 'NHS tribunal' means the tribunal constituted under the National Health Service Act 1977 s 46 (repealed) for England and Wales: Appointments Commission Regulations 2006, SI 2006/2380, reg 1(2).

13 le pursuant to regulations made under the National Health Service Act 1977 s 29B(2A) (repealed).

14 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(e)(ii). 'Primary care list' means: (1) a list referred to in the National Health Service Act 2006 s 159(1) (see PARA 402); (2) a list of persons undertaking to provide general medical services prepared in accordance with regulations under the National Health Service Act 1977 s 29 (repealed) as the list existed on or before 31 March 2004; (3) a list of persons undertaking to provide general dental services prepared in accordance with regulations under the National Health Service Act 1977 s 36 (repealed) as the list existed on or before 31 March 2006; (4) a list of persons approved by a primary care trust for the purpose of assisting in the provision of general medical services prepared in accordance with regulations under the National Health Service Act 1977 s 43D(1) (repealed) as the list existed on or before 31 March 2004; (5) a list of persons approved by a primary care trust for the purpose of assisting in the provision of general dental services prepared in accordance with regulations under the National Health Service Act 1977 s

43D(1) (repealed) as the list existed on or before 31 March 2006; or (6) a services list referred to in the National Health Service (Primary Care) Act 1997 s 8ZA(1)(a) (repealed) as the list existed on or before 31 March 2004: Appointments Commission Regulations 2006, SI 2006/2380, reg 1(2); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

15   le under the National Health Service Act 2006 s 151 (see PARA 388), or on grounds corresponding to any of the conditions referred to in s 151(2), (3) or (4).

16   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(e)(iii); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

17   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(e)(iv).

18   le under the National Health Service Act 2006 s 151 (see PARA 388), or on grounds corresponding to any of the conditions referred to in s 151(2), (3) or (4), or by a direction of the NHS Tribunal.

19   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(e)(v); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

20   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(e)(vi).

21   le by virtue of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001, SI 2001/3744, reg 6(2) or the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002, SI 2002/1920, reg 6(2).

22   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(e)(vii).

23   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(f).

24   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(g).

25   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(h).

26   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(i). 'Executive committee' means a committee of a primary care trust appointed under the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, SI 2000/89, reg 9(1) (see PARA 118); Appointments Commission Regulations 2006, SI 2006/2380, reg 1(2).

27   As to the meaning of 'health service' see PARA 10 note 3: definition applied by the Health Act 2006 s 82(1); Interpretation Act 1978 s 11.

28   Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(j)(i).

- 29 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(j)(ii). As to the meaning of 'month' see PARA 28 note 16.
- 30 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(j)(iii).
- 31 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(k).
- 32 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(l)(i). As to the meaning of 'health service hospital' see PARA 21 note 7: definition applied by the Appointments Commission Regulations 2006, SI 2006/2380, reg 1(2).
- 33 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(l)(ii).
- 34 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(l)(iii).
- 35 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(m).
- 36 Ie under the Company Directors Disqualification Act 1986 (see **COMPANIES** vol 15 (2009) PARA 1575 et seq), the Companies (Northern Ireland) Order 1989, SI 1989/2404, or the Company Directors Disqualification (Northern Ireland) Order 2002, SI 2002/3150 (NI 4).
- 37 Ie made under the Insolvency Act 1986 s 429(2)(b): see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 910.
- 38 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(n).
- 39 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(o)(i). As to the removal from office of a charity trustee or trustee for a charity see **CHARITIES** vol 8 (2010) PARAS 294, 566. As to the Charity Commissioners see **CHARITIES** vol 8 (2010) PARA 538 et seq.
- 40 Ie under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 s 7 (powers of Court of Session to deal with management of charities).
- 41 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(o)(ii).
- 42 Appointments Commission Regulations 2006, SI 2006/2380, reg 5(1)(o)(iii). As to registered social landlords see **HOUSING** vol 22 (2006 Reissue) PARA 66 et seq.
- 43 As to the meaning of 'writing' see PARA 7 note 2.
- 44 Appointments Commission Regulations 2006, SI 2006/2380, reg 6(1).



45 Appointments Commission Regulations 2006, SI 2006/2380, reg 6(2).

46 Appointments Commission Regulations 2006, SI 2006/2380, reg 6(3).

## **UPDATE**

### **809 Disqualification for appointment**

NOTE 11--'Health service body' also means the Care Quality Commission: SI 2006/2380 reg 1(2) (amended by SI 2008/2250).

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### **810. Termination of office.**

The chairman or a non-executive member of the Appointments Commission<sup>1</sup> or a health and social care commissioner<sup>2</sup> may resign his office at any time during his period of office<sup>3</sup> by giving notice in writing<sup>4</sup> to the Secretary of State<sup>5</sup>. Where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Commission or of the health service<sup>6</sup> that the chairman or a non-executive member or health and social care commissioner should continue to hold office, the Secretary of State may immediately remove that person from the office of chairman, non-executive member or commissioner (as the case may be) by giving him notice in writing to that effect<sup>7</sup>.

If the chairman or a non-executive member fails to attend any meeting of the Commission for a period of three months<sup>8</sup> the Secretary of State must immediately remove him from office unless satisfied that the absence was due to a reasonable cause<sup>9</sup>, and the person in question will be able to attend meetings of the Commission within such a period as the Secretary of State considers reasonable<sup>10</sup>. If a health and social care commissioner fails to attend any meeting of the health and social care appointments committee<sup>11</sup> for a period of three months the Secretary of State must immediately remove him from office unless satisfied that the absence was due to a reasonable cause<sup>12</sup>, and the person in question will be able to attend meetings of that committee within such a period as the Secretary of State considers reasonable<sup>13</sup>.

Where a person has been appointed to be the chairman or a non-executive member or a health and social care commissioner, and he becomes disqualified for appointment<sup>14</sup>, he must notify the Secretary of State in writing of such disqualification<sup>15</sup>. Where a person has been appointed to be the chairman or a non-executive member or health and social care commissioner, and it comes to the notice of the Secretary of State<sup>16</sup> that at the time of his appointment or later he was disqualified for appointment<sup>17</sup>: (1) the Secretary of State must declare that the person in question was not duly appointed or (as the case may be) became disqualified after appointment<sup>18</sup>; (2) the Secretary of State must remove him from office by notifying him in writing to that effect<sup>19</sup>; and (3) upon receipt of such notification, he must cease to act as chairman, non-executive member or health and social care commissioner<sup>20</sup>.

If any provision has been made by the Commission<sup>21</sup> that requires the chairman or a non-executive member or health and social care commissioner: (a) to disclose any pecuniary interest in any contract, proposed contract or other matter that is the subject of consideration of any meeting of the Commission, or of a committee or sub-committee of the Commission<sup>22</sup>; or (b) not to take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it<sup>23</sup>; where it appears to the Secretary of State that the chairman or a non-executive member or commissioner has failed to comply with such a provision, the Secretary of State may immediately remove him from office by giving him notice in writing to that effect<sup>24</sup>.

1 As to the Appointments Commission see PARA 805. As to membership of the Appointments Commission see PARA 806.

2 As to health and social care commissioners see PARA 814.

3 As to periods of office see PARA 808.

4 As to the meaning of 'writing' see PARA 7 note 2.

5 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(1). As to the Secretary of State see PARA 6 note 8.

6 As to the meaning of 'health service' see PARA 10 note 3: definition applied by the Health Act 2006 s 82(1); Interpretation Act 1978 s 11.

7 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(2).

8 As to the meaning of 'month' see PARA 28 note 16.

9 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(3)(a).

10 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(3)(b).

11 As to the health and social care appointments committee see PARA 814.

12 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(4)(a).

13 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(4)(b).

14 Ie under the Appointments Commission Regulations 2006, SI 2006/2380, reg 5: see PARA 809.

15 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(5).

16 Ie whether under the Appointments Commission Regulations 2006, SI 2006/2380, reg 7(5) (see the text to notes 14-15) or otherwise.

17 Ie under the Appointments Commission Regulations 2006, SI 2006/2380, reg 5: see PARA 809.

18 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(6)(a).

19 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(6)(b).

20 Appointments Commission Regulations 2006, SI 2006/2380, reg 7(6)(c).

- 21    le under the Health Act 2006 Sch 4 para 11: see PARA 815.
- 22    Appointments Commission Regulations 2006, SI 2006/2380, reg 7(7)(a).
- 23    Appointments Commission Regulations 2006, SI 2006/2380, reg 7(7)(b).
- 24    Appointments Commission Regulations 2006, SI 2006/2380, reg 7(8).

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### **811. Suspension from office.**

The Secretary of State<sup>1</sup> may suspend the chairman or a non-executive member of the Appointments Commission<sup>2</sup> or a health and social care commissioner<sup>3</sup> from office while the Secretary of State considers whether: (1) to remove him<sup>4</sup> from office<sup>5</sup>; or (2) the person is disqualified for appointment<sup>6</sup>, or was<sup>7</sup> so disqualified<sup>8</sup>. The Secretary of State must notify a person suspended of the decision to suspend him from office, and the decision takes effect upon receipt of such notification<sup>9</sup>.

A period of suspension must not exceed six months<sup>10</sup>. However, the Secretary of State may at any time review a suspension and must review a suspension after three months if so requested by the person who has been suspended<sup>11</sup>. Where the Secretary of State reviews a suspension he may revoke the suspension, in which case it ceases to have effect<sup>12</sup>, or suspend the person from office for a further period of not more than six months from the expiry of the current period of suspension<sup>13</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Appointments Commission see PARA 805. As to membership of the Appointments Commission see PARA 806.

3 As to health and social care commissioners see PARA 814.

4 Ie under the Appointments Commission Regulations 2006, SI 2006/2380, reg 7(2) or (8): see PARA 810.

5 Appointments Commission Regulations 2006, SI 2006/2380, reg 8(1)(a).

6 Ie under the Appointments Commission Regulations 2006, SI 2006/2380, reg 5: see PARA 809.

7 Ie for the purposes of the Appointments Commission Regulations 2006, SI 2006/2380, reg 7(6): see PARA 810.

8 Appointments Commission Regulations 2006, SI 2006/2380, reg 8(1)(b).

9 Appointments Commission Regulations 2006, SI 2006/2380, reg 8(2).

10 Appointments Commission Regulations 2006, SI 2006/2380, reg 8(3). As to the meaning of 'month' see PARA 28 note 16.

- 11 Appointments Commission Regulations 2006, SI 2006/2380, reg 8(4).
- 12 Appointments Commission Regulations 2006, SI 2006/2380, reg 8(5)(a).
- 13 Appointments Commission Regulations 2006, SI 2006/2380, reg 8(5)(b).

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## **812. Remuneration and allowances.**

The Secretary of State<sup>1</sup> may determine the amount of the remuneration and allowances that the Appointments Commission<sup>2</sup> is to pay the chairman, non-executive members<sup>3</sup> and health and social care commissioners<sup>4</sup>. Such payments must be made at such times and in such manner and subject to such conditions as the Secretary of State may determine<sup>5</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Appointments Commission see PARA 805.

3 As to membership of the Appointments Commission see PARA 806.

4 Appointments Commission Regulations 2006, SI 2006/2380, reg 9(1). As to health and social care commissioners see PARA 814.

5 Appointments Commission Regulations 2006, SI 2006/2380, reg 9(2).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/813. Committees.

### **813. Committees.**

The Appointments Commission<sup>1</sup> may appoint such committees and sub-committees as it thinks appropriate<sup>2</sup>. A committee or sub-committee may consist of or include persons who are not members of the Commission<sup>3</sup>. The Commission may delegate to a committee or sub-committee such of its functions as it thinks fit<sup>4</sup>, and may, in particular, delegate to a committee the function of appointing a sub-committee<sup>5</sup>. The Commission may make arrangements for the payment of such remuneration and allowances as it thinks fit to any person who is a member of a committee or sub-committee<sup>6</sup>, but is not an employee of the Commission<sup>7</sup>, whether or not he is also a member of the Commission<sup>8</sup>.

1 As to the Appointments Commission see PARA 805.

2 Health Act 2006 Sch 4 para 9(1). Schedule 4 para 9 is subject to Sch 4 para 10 (see PARA 814) and to any directions given by the Secretary of State: Sch 4 para 9(5). As to the Secretary of State see PARA 6 note 8. As to directions see PARA 827. As to the procedure of committees and sub-committees see PARA 815.

3 Health Act 2006 Sch 4 para 9(2). As to membership of the Appointments Commission see PARA 806.

4 Health Act 2006 Sch 4 para 9(3)(a). As to the functions of the Appointments Commission see PARA 820 et seq.

5 Health Act 2006 Sch 4 para 9(3)(b).

6 Health Act 2006 Sch 4 para 9(4)(a).

7 Health Act 2006 Sch 4 para 9(4)(b). As to the staff of the Appointments Commission see PARA 816.

8 Health Act 2006 Sch 4 para 9(4).



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#### **814. The health and social care appointments committee.**

There is to be a committee of the Appointments Commission<sup>1</sup> to be known as the health and social care appointments committee<sup>2</sup>. The committee is to discharge on behalf of the Commission: (1) the functions which are exercisable by it by virtue of directions relating to the appointment functions of the Secretary of State<sup>3</sup>, the Privy Council<sup>4</sup> or the Welsh Ministers<sup>5</sup>; and (2) such other functions as the Secretary of State may specify<sup>6</sup>.

The committee is to consist of the chairman of the Commission<sup>7</sup>, the chief executive<sup>8</sup>, and not more than the prescribed<sup>9</sup> number of persons appointed by the Secretary of State<sup>10</sup>. The persons so appointed are known as 'health and social care commissioners'<sup>11</sup>.

Regulations may: (a) prescribe conditions which must be satisfied in relation to persons before they are appointed as health and social care commissioners<sup>12</sup>; (b) make provision as to the circumstances in which persons are disqualified for being health and social care commissioners<sup>13</sup>; (c) make provision as to the terms on which the health and social care commissioners are to be appointed<sup>14</sup>.

1 As to the Appointments Commission see PARA 805. As to committees and sub-committees generally see PARA 813.

2 Health Act 2006 Sch 4 para 10(1).

3 I.e. directions under the Health Act 2006 s 58: see PARA 820. As to the Secretary of State see PARA 6 note 8.

4 I.e. directions under the Health Act 2006 s 60: see PARA 821.

5 Health Act 2006 Sch 4 para 10(2)(a). The directions referred to in this case are those under the Health Act 2006 s 61: see PARA 822.

6 Health Act 2006 Sch 4 para 10(2)(b).

7 Health Act 2006 Sch 4 para 10(3)(a). As to the chairman of the Appointments Commission see PARA 806.

8 Health Act 2006 Sch 4 para 10(3)(b). As to the chief executive see PARA 807.

9 'Prescribed' means prescribed by regulations made by the Secretary of State: see Health Act 2006 s 71(1). As to the making of regulations see PARA 828.

10 Health Act 2006 Sch 4 para 10(3)(c). The prescribed maximum number of persons to be appointed to the committee is nine: see the Appointments Commission Regulations 2006, SI 2006/2380, reg 3.

11 Health Act 2006 Sch 4 para 10(4).

12 Health Act 2006 Sch 4 para 10(5)(a). At the date at which this volume states the law no such regulations had been made.

13 Health Act 2006 Sch 4 para 10(5)(b). As to disqualification for appointment see PARA 809.

14 Health Act 2006 Sch 4 para 10(5)(c). The provision that may be made in relation to the health and social care commissioners under Sch 4 para (5)(c) includes, in particular, provision as to: (1) the period for which they are to hold office as health and social care commissioners (Sch 4 para 10(6)(a)); (2) their eligibility for re-appointment as such commissioners (Sch 4 para 10(6)(b)); (3) remuneration and allowances payable to them as such commissioners (Sch 4 para 10(6)(c)); (4) circumstances in which they may be suspended or removed from office as such commissioners (Sch 4 para 10(6)(d)). As to periods of office and eligibility for re-appointment see PARA 808. As to remuneration and allowances see PARA 812. As to suspension from office see PARA 811. As to removal from office see PARA 810.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/815. Proceedings.

### **815. Proceedings.**

Subject to any directions given by the Secretary of State<sup>1</sup>, the Appointments Commission<sup>2</sup> may make such provision as it thinks fit to regulate its own proceedings (including quorum)<sup>3</sup>, and the procedure (including quorum) of its committees and sub-committees<sup>4</sup>. On any occasion when both the chairman and the vice-chairman<sup>5</sup> are, for any reason, unable to perform the duties of chairman, the other members of the Commission may appoint one of the non-executive members to act in the place of the chairman<sup>6</sup>. The validity of any proceedings of the Commission, or any of its committees or sub-committees, is not affected by any vacancy in the office of chairman or chief executive<sup>7</sup> or in the membership of the Commission or the committee or sub-committee<sup>8</sup>, or any defect in the appointment of the chairman or the chief executive or a member of the Commission or the committee or sub-committee<sup>9</sup>. The Public Bodies (Admission to Meetings) Act 1960 applies to meetings of the Commission<sup>10</sup>.

The application of the Commission's seal must be authenticated by the signature of the chairman or another member of the Commission or any other person authorised by the Commission for the purpose<sup>11</sup>. A document purporting to be duly executed under the seal of the Commission or to be signed on behalf of the Commission is to be received in evidence<sup>12</sup>, and unless the contrary is proved, taken to be so executed or signed<sup>13</sup>.

<sup>1</sup> Health Act 2006 Sch 4 para 11(2). As to the Secretary of State see PARA 6 note 8. As to directions see PARA 827.

<sup>2</sup> As to the Appointments Commission see PARA 805.

<sup>3</sup> Health Act 2006 Sch 4 para 11(1)(a).

<sup>4</sup> Health Act 2006 Sch 4 para 11(1)(b). As to committees and sub-committees see PARA 813.

<sup>5</sup> As to the chairman, vice-chairman and membership of the Appointments Commission see PARA 806.

<sup>6</sup> Health Act 2006 Sch 4 para 12.

<sup>7</sup> As to the chief executive see PARA 807.

<sup>8</sup> Health Act 2006 Sch 4 para 13(a).

<sup>9</sup> Health Act 2006 Sch 4 para 13(b).

10 Health Act 2006 Sch 4 para 14. As to the Public Bodies (Admission to Meetings) Act 1960 see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 40.

11 Health Act 2006 Sch 4 para 23(1).

12 Health Act 2006 Sch 4 para 23(2)(a).

13 Health Act 2006 Sch 4 para 23(2)(b).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/816. Staff.

### **816. Staff.**

The Appointments Commission<sup>1</sup> may appoint such persons to be employees of the Commission as it thinks fit<sup>2</sup>. The Commission may make arrangements for persons to be seconded to the Commission to serve as members of its staff<sup>3</sup>. The chief executive must be an employee of the Commission, or a person seconded to the staff of the Commission<sup>4</sup>.

Employees of the Commission are to be appointed on such terms and conditions as the Commission determines<sup>5</sup>. Without prejudice to its other powers, the Commission may pay, or make provision for the payment of pensions, allowances or gratuities<sup>6</sup>, or compensation for loss of employment or reduction of remuneration<sup>7</sup>, to or in respect of its employees<sup>8</sup>.

Subject to any directions given by the Secretary of State<sup>9</sup>: (1) the Commission may, to such extent as it determines, delegate any of its functions to any members of its staff<sup>10</sup>; and (2) any committee of the Commission may, to such extent as the committee determines, delegate any function conferred on it to any of its sub-committees<sup>11</sup> or any member of the Commission's staff<sup>12</sup>.

1 As to the Appointments Commission see PARA 805.

2 Health Act 2006 Sch 4 para 15(1).

3 Health Act 2006 Sch 4 para 15(2). A period of secondment on the staff of the Commission does not affect the continuity of a person's employment with the employer from whose service he is seconded: Sch 4 para 15(3). References to members of the Commission's staff are to persons who either are employees of the Commission or have been seconded to it to serve as members of its staff: Sch 4 para 15(4).

4 See the Health Act 2006 Sch 4 para 4(2); and PARA 807.

5 Health Act 2006 Sch 4 para 16(1).

6 Health Act 2006 Sch 4 para 16(2)(a).

7 Health Act 2006 Sch 4 para 16(2)(b).

8 Health Act 2006 Sch 4 para 16(2).

9 Health Act 2006 Sch 4 para 17(3). As to directions see PARA 827. As to the Secretary of State see PARA 6 note 8.

10 Health Act 2006 Sch 4 para 17(1).

11 As to committees and sub-committees see PARA 813.

12 Health Act 2006 Sch 4 para 17(2). Schedule 4 para 17(2) does not apply in relation to decisions falling to be made by the health and social care appointments committee in relation to particular appointments: Sch 4 para 17(3). As to the health and social care appointments committee see PARA 814.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/817. Finance.

### **817. Finance.**

The Secretary of State<sup>1</sup> may make such annual payments to the Appointments Commission<sup>2</sup> as he thinks appropriate in respect of the performance by it of: (1) any functions exercisable by virtue of a direction<sup>3</sup> in relation to strategic health authorities<sup>4</sup>, primary care trusts<sup>5</sup> or NHS trusts<sup>6</sup>; and (2) such other of the Commission's functions as may be prescribed<sup>7</sup>. The Secretary of State may make such other payments to the Commission as he thinks appropriate in respect of the performance by it of any functions exercisable by virtue of a direction<sup>8</sup> in relation to special health authorities<sup>9</sup>, or certain other specified bodies<sup>10</sup>. Before deciding the amount of any such payment the Secretary of State must take account of any income received by the Commission from any other source<sup>11</sup>. Payments may be made at such times<sup>12</sup>, and subject to such conditions (if any)<sup>13</sup>, as the Secretary of State thinks appropriate<sup>14</sup>.

The Welsh Ministers<sup>15</sup> may make such payments to the Commission as they think appropriate in respect of the performance by the Commission of functions exercisable by virtue of a direction<sup>16</sup> given by them<sup>17</sup>.

The Secretary of State may make loans to the Commission<sup>18</sup> on such terms as the Secretary of State thinks appropriate<sup>19</sup>. The Commission may charge for providing: (a) any services under arrangements made<sup>20</sup> with a Minister of the Crown<sup>21</sup>; (b) any services<sup>22</sup> provided to other bodies<sup>23</sup>; or (c) such other services as may be prescribed<sup>24</sup>. The amount of any charge is to be fixed in such a way as the Commission considers appropriate for recovering the costs incurred by it in, or in connection with, providing the services in question<sup>25</sup>.

There is to be paid out of money provided by Parliament<sup>26</sup> any expenditure incurred by the Secretary of State by virtue of the Health Act 2006<sup>27</sup>, and any increase attributable to the Act in the sums payable out of money so provided under any other enactment<sup>28</sup>.

1 As to the Secretary of State see PARA 6 note 8.

2 As to the Appointments Commission see PARA 805. As to the keeping of accounts by the Commission see PARA 818.

3 I.e. under the Health Act 2006 s 58: see PARA 820.

4 As to strategic health authorities see PARA 94 et seq.

5 As to primary care trusts see PARA 111.

6 Health Act 2006 Sch 4 para 18(1)(a), (2)(a). As to NHS trusts see PARA 155.

7 Health Act 2006 Sch 4 para 18(1)(a), (2)(b). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 71(1). As to the making of regulations see PARA 828. The functions that the

Commission may exercise under the Appointments Commission Regulations 2006, SI 2006/2380, reg 10(1) (see PARA 825) are prescribed as functions for these purposes: reg 11.

8    le under the Health Act 2006 s 58: see PARA 820.

9    Health Act 2006 Sch 4 para 18(1)(b), (3)(a). As to the special health authorities see PARA 136.

10   Health Act 2006 Sch 4 para 18(1)(b), (3)(b). The specified bodies are those mentioned in s 58(3) or (4) (see PARA 820) or s 60 (see PARA 821): see Sch 4 para 18(3)(b).

11   Health Act 2006 Sch 4 para 18(4).

12   Health Act 2006 Sch 4 para 18(5)(a).

13   Health Act 2006 Sch 4 para 18(5)(b).

14   Health Act 2006 Sch 4 para 18(5).

15   This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6.

16   le under the Health Act 2006 s 61: see PARA 822.

17   Health Act 2006 Sch 4 para 19; Government of Wales Act 2006 Sch 11 para 32.

18   Health Act 2006 Sch 4 para 20(1).

19   Health Act 2006 Sch 4 para 20(2).

20   le under the Health Act 2006 s 63(2) or (4): see PARA 824.

21   Health Act 2006 Sch 4 para 21(1)(a).

22   le under the Health Act 2006 s 64(1)-(3): see PARA 824.

23   Health Act 2006 Sch 4 para 21(1)(b).

24   Health Act 2006 Sch 4 para 21(1)(c). At the date at which this volume states the law no such regulations had been made.



25 Health Act 2006 Sch 4 para 21(2).

26 As to the provision of money by Parliament see **PARLIAMENT** vol 78 (2010) PARA 804.

27 Health Act 2006 s 81(a).

28 Health Act 2006 s 81(b). Except where the context otherwise requires, 'enactment' includes any provision of subordinate legislation (within the meaning of the Interpretation Act 1978), and references to enactments include enactments passed or made after 19 July 2006 (being the date of the passing of the Health Act 2006): see s 82(2), (3). 'Subordinate legislation' means Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act: Interpretation Act 1978 s 21(1).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/818. Accounts.

### **818. Accounts.**

The Appointments Commission<sup>1</sup> must keep accounts in such form as the Secretary of State directs<sup>2</sup>. The Commission must prepare annual accounts in respect of each financial year<sup>3</sup> in such form as the Secretary of State directs<sup>4</sup>. Before the end of the specified period<sup>5</sup> following each financial year the Commission must send a copy of the annual accounts for that year to the Secretary of State<sup>6</sup>, and to the Comptroller and Auditor General<sup>7</sup>. The Comptroller and Auditor General must examine, certify and report on the annual accounts<sup>8</sup>, and lay copies of the accounts and of his report before each House of Parliament<sup>9</sup>.

1 As to the Appointments Commission see PARA 805.

2 Health Act 2006 Sch 4 para 22(1). As to the Secretary of State see PARA 6 note 8. As to directions see PARA 827. As to financial matters see PARA 817.

3 'Financial year', in relation to the Commission, means the period starting on the day the Commission is established and ending with the next 31 March, or any succeeding period of 12 months: Health Act 2006 s 71(1). The Commission was established on 1 October 2006. As to the meaning of 'month' see PARA 28 note 16.

4 Health Act 2006 Sch 4 para 22(2).

5 The 'specified period' is such period as the Secretary of State directs: Health Act 2006 Sch 4 para 22(5).

6 Health Act 2006 Sch 4 para 22(3)(a).

7 Health Act 2006 Sch 4 para 22(3)(b). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

8 Health Act 2006 Sch 4 para 22(4)(a).

9 Health Act 2006 Sch 4 para 22(4)(b). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(1) ESTABLISHMENT AND MEMBERSHIP/819. Reports and information.

### **819. Reports and information.**

The Appointments Commission<sup>1</sup> must prepare in respect of each financial year<sup>2</sup> a report relating to its performance of its functions during that year<sup>3</sup>. The report must in particular: (1) set out the practices adopted by the Commission during the year with a view to ensuring equal opportunities<sup>4</sup>; (2) contain information about complaints made to the Commission during the year, and about how complaints made to the Commission were resolved during the year<sup>5</sup>; and (3) deal with any such other matters as the Secretary of State may direct<sup>6</sup>. The Commission must send the Secretary of State and the Welsh Ministers<sup>7</sup> copies of the report as soon as possible after the end of the year<sup>8</sup>, and publish the report in such manner as the Commission considers appropriate<sup>9</sup>.

If requested to do so by the Secretary of State<sup>10</sup>, the Privy Council<sup>11</sup>, a government department<sup>12</sup>, or the Commissioner for Public Appointments<sup>13</sup>, the Appointments Commission must provide him or it with such a report or information relating to any aspect of the Commission's performance of its functions as is specified in the request<sup>14</sup>. If requested to do so by the Welsh Ministers, the Commission must provide it with such a report or information relating to any aspect of the Commission's performance of its functions in relation to the Welsh Ministers<sup>15</sup> as is specified in the request<sup>16</sup>. If requested to do so by a specified body<sup>17</sup>, the Commission must provide the body with such a report or information relating to the Commission's performance of its functions in relation to the body as is specified in the request<sup>18</sup>.

1 As to the Appointments Commission see PARA 805.

2 As to the meaning of 'financial year' see PARA 818 note 3.

3 Health Act 2006 s 67(1). As to the functions of the Appointments Commission see PARA 820 et seq.

4 Health Act 2006 s 67(2)(a).

5 Health Act 2006 s 67(2)(b).

6 Health Act 2006 s 67(2)(c). As to the Secretary of State see PARA 6 note 8. As to directions see PARA 827.

7 This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6.

8 Health Act 2006 s 67(3)(a). The Secretary of State must lay before each House of Parliament a copy of every such report sent to him: s 67(4). As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

9 Health Act 2006 s 67(3)(b).

10 Health Act 2006 s 68(1)(a).

11 Health Act 2006 s 68(1)(b). As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.

12 Health Act 2006 s 68(1)(c).

13 Health Act 2006 s 68(1)(d). As to the Commissioner for Public Appointments see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 953.

14 Health Act 2006 s 68(1).

15 Ie its functions under the Health Act 2006 s 61: see PARA 822.

16 Health Act 2006 s 68(2).

17 The specified bodies are those in relation to which functions are exercisable by the Commission by virtue of a direction under the Health Act 2006 s 58 (see PARA 820), s 60 (see PARA 821) or s 61 (see PARA 822) (s 68(4) (a)), or arrangements are in force under s 63 (see PARA 824) (s 68(4)(b)).

18 Health Act 2006 s 68(3).

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## (2) FUNCTIONS

### 820. Secretary of State's appointment functions.

The Appointments Commission<sup>1</sup> is to exercise<sup>2</sup> so much of any function of the Secretary of State<sup>3</sup> relating to the appointment<sup>4</sup> of any of the following persons as may be specified in a direction<sup>5</sup> given by the Secretary of State<sup>6</sup>. The persons are:

- 580 (1) chairmen and non-executive members<sup>7</sup> of strategic health authorities<sup>8</sup>, primary care trusts<sup>9</sup>, NHS trusts<sup>10</sup> or special health authorities<sup>11</sup>;
- 581 (2) trustees for NHS trusts or primary care trusts<sup>12</sup>;
- 582 (3) special trustees for university and teaching hospitals<sup>13</sup>;
- 583 (4) chairmen and non-executive members of any of the Commission for Healthcare Audit and Inspection<sup>14</sup>, the Commission for Social Care Inspection<sup>15</sup>, the Council for the Regulation of Health Care Professionals<sup>16</sup>, the General Social Care Council<sup>17</sup>, the Health Protection Agency<sup>18</sup>, the Human Fertilisation and Embryology Authority<sup>19</sup>, the Human Tissue Authority<sup>20</sup>, the National Biological Standards Board<sup>21</sup>, the Independent Regulator of NHS Foundation Trusts<sup>22</sup>, the Postgraduate Medical Education and Training Board<sup>23</sup>;
- 584 (5) chairmen and non-executive members of any other body (however established) which has functions<sup>24</sup> relating to health<sup>25</sup>, social care<sup>26</sup>, or the regulation of professions associated with health or social care<sup>27</sup>.

If a function of the Secretary of State relating to the appointment of any persons listed above is exercisable by the Secretary of State jointly or concurrently with a devolved authority<sup>28</sup>, or any other person<sup>29</sup> who is not a Minister of the Crown<sup>30</sup>, a requirement to exercise the function jointly or concurrently does not prevent the Secretary of State from giving a direction<sup>31</sup> in respect of the function, but he must not do so unless he first consults<sup>32</sup> the devolved authority or other person<sup>33</sup>. If the Secretary of State gives such a direction, so much of the functions of the Secretary of State and the devolved authority or other person as is specified in the direction is exercisable by the Appointments Commission acting alone<sup>34</sup>.

1 As to the Appointments Commission see PARA 805.

2 As to the exercise by the Appointments Commission of its appointments functions see PARA 823. As to the exercise by the Appointments Commission of its functions generally see PARA 826.

3 As to the Secretary of State see PARA 6 note 8.

4 'Appointment' includes: (1) any process involving an appointment (whether described as re-appointment or replacement or otherwise) including a temporary appointment; and (2) nomination for appointment; and also includes removal or suspension from office: Health Act 2006 s 71(1), (2). References to functions relating to the appointment of a person include functions relating to a person's tenure of office: s 71(3).

5 As to directions see PARA 827.

6 Health Act 2006 s 58(1).

7 'Non-executive members': (1) in relation to a body whose members are known as directors, means non-executive directors; and (2) in relation to a body in the case of which no distinction is made between executive and non-executive members, means members of the body (apart from the chairman): Health Act 2006 s 71(1), (6).

8 As to strategic health authorities see PARA 94 et seq.

9 As to primary care trusts see PARA 111.

10 As to NHS trusts see PARA 155.

11 Health Act 2006 s 58(2)(a). As to the special health authorities see PARA 136.

12 Health Act 2006 s 58(2)(b).

13 Health Act 2006 s 58(2)(c) (amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 281, 284). The special trustees referred to are those to which the National Health Service Act 2006 s 212 or the National Health Service (Wales) Act 2006 s 160 (see PARA 66) applies: Health Act 2006 s 58(2)(c) (as so amended).

14 As to the Commission for Healthcare Audit and Inspection see PARA 552.

15 As to the Commission for Social Care Inspection see **SOCIAL SERVICES AND COMMUNITY CARE**.

16 As to the Council for the Regulation of Health Care Professionals see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 294.

17 As to the General Social Care Council see **SOCIAL SERVICES AND COMMUNITY CARE**.

18 As to the Health Protection Agency see PARA 213.

19 As to the Human Fertilisation and Embryology Authority see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 280.

20 As to the Human Tissue Authority see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 239.

21 As to the National Biological Standards Board see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 8.

22 As to the Independent Regulator of NHS Foundation Trusts see PARA 188.

23 Health Act 2006 s 58(3), Sch 5. As to the Postgraduate Medical Education and Training Board see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 71. Until 30 June 2008 there is also included among the bodies listed the Commission for Patient and Public Involvement in Health: see Sch 5 (amended by the Local Government and Public Involvement in Health Act 2007 Sch 18 Pt 18); Local Government and Public Involvement in Health Act 2007 (Commencement No 4) Order 2008, SI 2008/461, art 2(4)(b), (c). As to the Commission for Patient and Public Involvement in Health see PARA 535.

24 For these purposes it is immaterial that a body has functions relating to matters other than those specified (Health Act 2006 s 58(5)(a)), or that the body's functions are not exercisable only in relation to England (s 58(5)(b)). As to the meaning of 'England' see PARA 6 note 2.

25 Health Act 2006 s 58(4)(a).

26 Health Act 2006 s 58(4)(b).

27 Health Act 2006 s 58(4)(c).

28 Health Act 2006 s 59(1)(a). Each of the following is a 'devolved authority': the Scottish Ministers, the Welsh Ministers, and any Northern Ireland department: s 71(1), (7); Government of Wales Act 2006 Sch 11 para 32. This provision originally referred to the National Assembly for Wales but the function is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6. As to the Scottish Ministers and as to devolved government in Northern Ireland see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

29 As to the meaning of 'person' see PARA 17 note 2.

30 Health Act 2006 s 59(1)(b). As to the meaning of 'Minister of the Crown' see PARA 77 note 3: definition applied by the Health Act 2006 s 71(1).

31 Ie under the Health Act 2006 s 58: see the text to note 6.

32 As to the exercise of the duty to consult see **JUDICIAL REVIEW** vol 61 (2010) PARA 627.

33 Health Act 2006 s 59(2). Section 59(2) and (3) (see the text to note 34) do not apply if the function is exercisable jointly or concurrently with the Scottish Ministers, but the Secretary of State may nevertheless give a direction under s 58 in respect of the exercise of any function that he has: s 59(4).

34 Health Act 2006 s 59(3). See also note 33.

## UPDATE

### 820 Secretary of State's appointment functions

TEXT AND NOTES 14-23--Head (4). Omit 'the Commission for Healthcare Audit and Inspection, the Commission for Social Care Inspection, the Council for the Regulation of Health Care Professionals, the National Biological Standards Board' and add 'the Care Quality Commission, and the non-executive members of the Council for Healthcare Regulatory Excellence': Health Act 2006 s 58(3), Sch 5 (amended by the Health and Social Care Act 2008 Sch 5 para 80, Sch 10 paras 20, 23, Sch 15 Pts 1, 2, 7).



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### **821. Privy Council's appointment functions.**

The Appointments Commission<sup>1</sup> is to exercise<sup>2</sup> so much of any function of the Privy Council<sup>3</sup> relating to the appointment<sup>4</sup> of members to any of the following regulatory bodies as may be specified in a direction<sup>5</sup> given by the Privy Council<sup>6</sup>. The regulatory bodies are the General Chiropractic Council<sup>7</sup>, the General Dental Council<sup>8</sup>, the General Medical Council<sup>9</sup>, the General Optical Council<sup>10</sup>, the General Osteopathic Council<sup>11</sup>, the Health Professions Council<sup>12</sup>, and the Nursing and Midwifery Council<sup>13</sup>.

The Appointments Commission is to exercise so much of any function of the Privy Council relating to the appointment of members to the Council of the Royal Pharmaceutical Society of Great Britain<sup>14</sup> as may be specified in a direction given by the Privy Council<sup>15</sup>.

1 As to the Appointments Commission see PARA 805.

2 As to the exercise by the Appointments Commission of its appointments functions see PARA 823. As to the exercise by the Appointments Commission of its functions generally see PARA 826.

3 As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.

4 As to the meaning of 'appointment' see PARA 820 note 4.

5 As to directions see PARA 827.

6 Health Act 2006 s 60(1).

7 As to the General Chiropractic Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 591.

8 As to the General Dental Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 389 et seq.

9 As to the General Medical Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 13 et seq.

10 As to the General Optical Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 813 et seq.

11 As to the General Osteopathic Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 591.

12 As to the Health Professions Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 308.

13 Health Act 2006 Sch 6. As to the Nursing and Midwifery Council see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 691.

14 As to the Royal Pharmaceutical Society of Great Britain see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 881 et seq.

15 Health Act 2006 s 60(2).

## **UPDATE**

### **821 Privy Council's appointment functions**

TEXT AND NOTES--The Appointments Commission is to exercise so much of any function of the Privy Council relating to the appointment of the chair of the Council for Healthcare Regulatory Excellence or members of the Office of the Health Professions Adjudicator as may be specified in a direction given by the Privy Council: Health Act 2006 s 60(3) (added by the Health and Social Care Act 2008 Sch 10 para 21).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(2) FUNCTIONS/822. Welsh Ministers' appointment functions.

## **822. Welsh Ministers' appointment functions.**

The Appointments Commission<sup>1</sup> is to exercise<sup>2</sup> so much of any function of the Welsh Ministers<sup>3</sup> relating to the appointment<sup>4</sup> of members to the Commission for Healthcare Audit and Inspection<sup>5</sup> or the Health Protection Agency<sup>6</sup> as may be specified in a direction<sup>7</sup> given by the Welsh Ministers<sup>8</sup>.

1 As to the Appointments Commission see PARA 805.

2 As to the exercise by the Appointments Commission of its appointments functions see PARA 823. As to the exercise by the Appointments Commission of its functions generally see PARA 826.

3 This function was originally vested in the National Assembly for Wales but is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6.

4 As to the meaning of 'appointment' see PARA 820 note 4.

5 As to the Commission for Healthcare Audit and Inspection see PARA 552.

6 As to the Health Protection Agency see PARA 213.

7 As to directions see PARA 827.

8 Health Act 2006 s 61; Government of Wales Act 2006 Sch 11 para 32.

### **UPDATE**

## **822 Welsh Ministers' appointment functions**

TEXT AND NOTE 5--Reference to the Commission for Healthcare Audit and Inspection omitted: Health Act 2006 s 61 (amended by the Health and Social Care Act 2008 Sch 5 para 79, Sch 15 Pt 1).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(2) FUNCTIONS/823. Exercise of appointments functions.

### **823. Exercise of appointments functions.**

Where any function is exercisable by the Appointments Commission<sup>1</sup> in relation to an appointment<sup>2</sup> by virtue of a direction given by the Secretary of State<sup>3</sup>, the Privy Council<sup>4</sup> or the Welsh Ministers<sup>5</sup>, the function is exercisable by the Commission in relation to the appointment in such manner as it thinks fit, having regard to the provisions of any enactment<sup>6</sup> or instrument relating to the making of the appointment<sup>7</sup>.

The direction may contain provisions relating to the manner in which the function is to be exercised<sup>8</sup>. The Commission must take into account any guidance which is issued by the Commissioner for Public Appointments<sup>9</sup> or any government department<sup>10</sup>, and relates to the making of appointments to public bodies<sup>11</sup>.

1 As to the Appointments Commission see PARA 805. As to the exercise by the Appointments Commission of its functions generally see PARA 826.

2 As to the meaning of 'appointment' see PARA 820 note 4.

3 Ie under the Health Act 2006 s 58: see PARA 820. As to the Secretary of State see PARA 6 note 8.

4 Ie under the Health Act 2006 s 60: see PARA 821. As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.

5 Health Act 2006 s 62(1). A direction given by the Welsh Ministers is one under s 61: see PARA 822. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6.

6 As to the meaning of 'enactment' see PARA 817 note 28.

7 Health Act 2006 s 62(2). References in any such provisions to things done, or falling to be done, by or in relation to the Secretary of State, the Privy Council or the Welsh Ministers have effect, so far as necessary in connection with the function being exercisable by the Appointments Commission, as references to things done, or falling to be done, by or in relation to the Commission: s 62(3); Government of Wales Act 2006 Sch 11 para 32.

8 Health Act 2006 s 62(4). Those provisions may, in particular, include provisions relating to: (1) matters to which the Commission is to have regard (s 62(5)(a)); (2) any criteria to be used (s 62(5)(b)); or (3) the procedure to be followed (s 62(5)(c)); in relation to making appointments in exercise of the function (s 62(5)).

9 As to the Commissioner for Public Appointments see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 953.

10 Health Act 2006 s 62(6)(a).

11 Health Act 2006 s 62(6)(b).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(2) FUNCTIONS/824. Assistance to other bodies with appointments.

#### **824. Assistance to other bodies with appointments.**

The Appointments Commission<sup>1</sup> may enter into arrangements<sup>2</sup> with the board of governors of an NHS foundation trust<sup>3</sup> providing for the Commission to assist the board in connection with the exercise of its powers<sup>4</sup> relating to: (1) the appointment<sup>5</sup> of the chairman and non-executive directors<sup>6</sup>; or (2) the appointment<sup>7</sup> of the initial chairman and the initial non-executive directors<sup>8</sup>.

The Commission may enter into arrangements with any minister of the Crown<sup>9</sup> exercising functions in relation to England<sup>10</sup>, or any officer acting on behalf of such a minister<sup>11</sup>, providing for the Commission to assist the minister or officer in connection with the exercise by him of any power relating to the appointment of the chairman of any body specified in the arrangements<sup>12</sup>, or the appointment of non-executive members<sup>13</sup> of such a body<sup>14</sup>. For these purposes it is immaterial that the body's functions are not exercisable only in relation to England<sup>15</sup>, but arrangements may not be entered into in relation to any powers that are exercisable by a Minister of the Crown jointly or concurrently with, or after consultation with a devolved authority<sup>16</sup>, or any other person<sup>17</sup> who is not a Minister of the Crown<sup>18</sup>.

The Commission may provide:

- 585 (a) chairmen and non-executive members of relevant bodies<sup>19</sup> with general advice on matters relating to recruitment, selection, appraisal, training or development and conditions of service (including remuneration)<sup>20</sup>;
- 586 (b) persons appointed by it to be chairmen and non-executive members of relevant bodies with mentoring and other assistance in relation to the exercise of their functions<sup>21</sup>; and
- 587 (c) chairmen and executive and non-executive members of relevant bodies with training in connection with their respective roles and responsibilities<sup>22</sup>.

The Commission may charge for providing any services under heads (a) to (c) above<sup>23</sup>. Arrangements<sup>24</sup> may provide for the Commission to exercise functions corresponding to those in heads (a), (b) or (c) above in relation to the persons in connection with whose appointments the Commission provides assistance under the arrangements<sup>25</sup>.

1 As to the Appointments Commission see PARA 805. As to the exercise by the Appointments Commission of its functions generally see PARA 826.

2 In the Health Act 2006 s 63, 'arrangements' means arrangements whether contractual or otherwise: s 63(7) (a).

3 Health Act 2006 s 63(1). As to NHS foundation trusts see PARA 174.

4 References in the Health Act 2006 s 63 to assistance in connection with the exercise of any power of appointment do not include the making of any appointment: s 63(7)(b). As to the meaning of 'appointment' see PARA 820 note 4.

5    le under the National Health Service Act 2006 Sch 7 para 17: see PARA 180.

6    Health Act 2006 s 63(2)(a); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

7    le under the National Health Service Act 2006 Sch 7 para 19: see PARA 181.

8    Health Act 2006 s 63(2)(b); National Health Service (Consequential Provisions) Act 2006 s 4, Sch 2 Pt 1 para 1(4).

9    As to the meaning of 'Minister of the Crown' see PARA 77 note 3: definition applied by the Health Act 2006 s 71(1).

10   Health Act 2006 s 63(3)(a). As to the meaning of 'England' see PARA 6 note 2.

11   Health Act 2006 s 63(3)(b).

12   Health Act 2006 s 63(4)(a).

13   As to the meaning of 'non-executive members' see PARA 820 note 7.

14   Health Act 2006 s 63(4)(b).

15   Health Act 2006 s 63(5).

16   Health Act 2006 s 63(6)(a). As to the meaning of 'devolved authority' see PARA 820 note 28.

17   As to the meaning of 'person' see PARA 17 note 2.

18   Health Act 2006 s 63(6)(b).

19   'Relevant body' means any body in relation to which a direction is in force under the Health Act 2006 s 58 (see PARA 820) or s 60 (see PARA 821).

20   Health Act 2006 s 64(1).

21   Health Act 2006 s 64(2).

22 Health Act 2006 s 64(3).

23 See the Health Act 2006 Sch 4 para 21(1)(b); and PARA 817.

24 The arrangements under the Health Act 2006 s 63(2) or (4): see the text to notes 5-8, 12-14.

25 Health Act 2006 s 64(4).



Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(2) FUNCTIONS/825. Power to confer additional functions.

### **825. Power to confer additional functions.**

Regulations made by the Secretary of State<sup>1</sup> may make provision for or in connection with conferring functions on the Appointments Commission<sup>2</sup> in relation to appointments<sup>3</sup> to applicable bodies<sup>4</sup> and matters relating to such appointments<sup>5</sup>. The functions which may be so conferred include: (1) administering schemes relating to the payment, to chairmen and non-executive members of applicable bodies, of remuneration and allowances falling to be determined by the Secretary of State<sup>6</sup>; (2) publishing or otherwise making available information as to the terms and conditions applying to chairmen and non-executive members of applicable bodies, including information as to such remuneration and allowances<sup>7</sup>; (3) assisting the Secretary of State in connection with the implementation of decisions as to the payment of such remuneration to such persons<sup>8</sup>; (4) advising the Secretary of State in connection with the payment of such allowances to such persons<sup>9</sup>; (5) advising the Secretary of State generally on matters relating to appointments to applicable bodies<sup>10</sup>.

The Commission may:

- 588 (a) administer schemes relating to the payment, to chairmen and non-executive members of relevant bodies<sup>11</sup>, of remuneration and allowances falling to be determined by the Secretary of State<sup>12</sup>;
- 589 (b) publish or otherwise make available information as to the terms and conditions applying to chairmen and non-executive members of relevant bodies, including information as to such remuneration and allowances<sup>13</sup>;
- 590 (c) assist the Secretary of State in connection with the implementation of decisions as to the payment of such remuneration and allowances<sup>14</sup>;
- 591 (d) advise the Secretary of State in connection with the payment of such allowances to such persons<sup>15</sup>;
- 592 (e) advise the Secretary of State generally on matters relating to appointments to relevant bodies<sup>16</sup>, NHS foundation trusts<sup>17</sup>, or bodies in respect of which arrangements may be entered into<sup>18</sup> providing for the Commission to assist in the exercise of any power relating to appointment of the body's chairman, or any non-executive member of the body<sup>19</sup>.

1 As to the making of regulations see PARA 828. As to the Secretary of State see PARA 6 note 8. As to the provision made see the text to notes 11-19.

2 As to the Appointments Commission see PARA 805.

3 As to the meaning of 'appointment' see PARA 820 note 4.

4 'Applicable body' means: (1) any body in relation to which a direction may be given under the Health Act 2006 s 58 (see PARA 820), s 60 (see PARA 821) or s 61 (see PARA 822); and (2) (except in s 65(2)(a) and (b): see the text to notes 6, 7) any NHS foundation trust and any body in respect of which arrangements providing for the Commission to assist in the exercise of any power relating to appointment of the body's chairman, or any non-executive member of the body, may be entered into under s 63(4) (see PARA 824): s 71(1), (4), (5). As to NHS foundation trusts see PARA 174. As to the meaning of 'non-executive members' see PARA 820 note 7.

5 Health Act 2006 s 65(1). Nothing in s 65(2) (see the text to notes 6-10) is to be read as prejudicing the generality of s 65(1): s 65(3).

6 Health Act 2006 s 65(2)(a).

7 Health Act 2006 s 65(2)(b).

8 Health Act 2006 s 65(2)(c).

9 Health Act 2006 s 65(2)(d).

10 Health Act 2006 s 65(2)(e).

11 'Relevant body' means a body in relation to which a direction may be given under the Health Act 2006 s 58 (see PARA 820), s 60 (see PARA 821) or s 61 (see PARA 822): Appointments Commission Regulations 2006, SI 2006/2380, reg 10(2).

12 Appointments Commission Regulations 2006, SI 2006/2380, reg 10(1)(a).

13 Appointments Commission Regulations 2006, SI 2006/2380, reg 10(1)(b).

14 Appointments Commission Regulations 2006, SI 2006/2380, reg 10(1)(c).

15 Appointments Commission Regulations 2006, SI 2006/2380, reg 10(1)(d).

16 Appointments Commission Regulations 2006, SI 2006/2380, reg 10(1)(e)(i).

17 Appointments Commission Regulations 2006, SI 2006/2380, reg 10(1)(e)(ii).

18 Ie under the Health Act 2006 s 63(4): see PARA 824.

19 Appointments Commission Regulations 2006, SI 2006/2380, reg 10(1)(e)(iii), (3).

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## **826. Exercise of functions generally.**

The Appointments Commission<sup>1</sup> must exercise its functions<sup>2</sup> efficiently and cost-effectively<sup>3</sup>, and in such a way as to ensure the maintenance of public confidence in the making of appointments<sup>4</sup> to public bodies<sup>5</sup>. In connection with the exercise of its functions the Commission may: (1) engage in or commission research<sup>6</sup>; (2) obtain and analyse data and other information<sup>7</sup>; (3) make available to any body or person<sup>8</sup> such persons, materials and facilities as it may determine<sup>9</sup>; (4) provide information, advice and guidance, whether generally or to such bodies or persons as it may determine<sup>10</sup>.

The Commission may do anything which it thinks is appropriate for facilitating<sup>11</sup>, or incidental or conducive to<sup>12</sup>, the exercise of its functions<sup>13</sup>. This power includes power: (a) to enter into contracts<sup>14</sup>; (b) to acquire, and dispose of, land<sup>15</sup> and other property<sup>16</sup>; (c) to form, or participate in the forming of, companies<sup>17</sup>; (d) to develop and make available for sale (otherwise than for profit) material for use in connection with appointments to applicable bodies<sup>18</sup>; (e) to provide accommodation<sup>19</sup>.

1 As to the Appointments Commission see PARA 805.

2 As to the functions of the Appointments Commission see PARAS 820-825.

3 Health Act 2006 s 66(1)(a).

4 As to the meaning of 'appointment' see PARA 820 note 4.

5 Health Act 2006 s 66(1)(b).

6 Health Act 2006 s 66(2)(a).

7 Health Act 2006 s 66(2)(b).

8 As to the meaning of 'person' see PARA 17 note 2.

9 Health Act 2006 s 66(2)(c).

10 Health Act 2006 s 66(2)(d). The information, advice and guidance which may be provided includes: (1) information relating to appointments to applicable bodies (s 66(3)(a)); and (2) advice and guidance on matters relating to appointments to applicable bodies or the governance of such bodies (s 66(3)(b)). As to the meaning of 'applicable body' see PARA 825 note 4.

11 Health Act 2006 s 66(4)(a).

12 Health Act 2006 s 66(4)(b).

13 Health Act 2006 s 66(4). This power is not restricted by s 66(2) (see the text to notes 6-10), but: (1) so far as it relates to functions conferred on the Commission under s 61 (see PARA 822), is exercisable subject to directions given by the Welsh Ministers (s 66(6)(a); Government of Wales Act 2006 Sch 11 para 32); (2) so far as it relates to any other functions of the Commission, is exercisable subject to directions given by the Secretary of State (Health Act 2006 s 66(6)(b)). The reference in s 66(6)(a) to the Welsh Ministers was originally to the National Assembly for Wales but this function is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6. As to the Secretary of State see PARA 6 note 8. As to directions see PARA 827.

14 Health Act 2006 s 66(5)(a).

15 As to the meaning of 'land' see PARA 24 note 2.

16 Health Act 2006 s 66(5)(b).

17 Health Act 2006 s 66(5)(c).

18 Health Act 2006 s 66(5)(d).

19 Health Act 2006 s 66(5)(e).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/3. THE APPOINTMENTS COMMISSION/(2) FUNCTIONS/827. Directions.

## **827. Directions.**

Any direction given<sup>1</sup> by the Secretary of State<sup>2</sup>, the Privy Council<sup>3</sup> or the Welsh Ministers<sup>4</sup> must be given in writing<sup>5</sup>, and may be varied or revoked by a subsequent such direction<sup>6</sup>. Where a function of the Secretary of State, the Privy Council or the Welsh Ministers is exercisable by the Appointments Commission<sup>7</sup> by virtue of such a direction, the direction does not preclude the Secretary of State, the Privy Council or the Welsh Ministers (as the case may be) from exercising the function<sup>8</sup>.

1    le under the Health Act 2006 Pt 5 (ss 57-71).

2    As to the Secretary of State see PARA 6 note 8.

3    As to the Privy Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 521-526.

4    This provision originally referred to the National Assembly for Wales but this function is now exercisable by the Welsh Ministers by virtue of the Government of Wales Act 2006 s 162(1), Sch 11 para 30. As to the meaning of 'the Welsh Ministers' see PARA 6 note 6.

5    Health Act 2006 s 70(1)(a). As to the meaning of 'writing' see PARA 7 note 2.

6    Health Act 2006 s 70(1)(b). The National Health Service Act 2006 s 272(7), (8), and the National Health Service (Wales) Act 2006 s 203(9), (10) (supplementary provisions about subordinate legislation: see PARA 9) apply in relation to any power to give such directions: Health Act 2006 s 70(3) (substituted by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 281, 285).

7    As to the Appointments Commission see PARA 805.

8    Health Act 2006 s 70(2).

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### **828. Orders and regulations.**

Any power to make an order or regulations is exercisable by statutory instrument<sup>1</sup>, such statutory instrument being subject to annulment in pursuance of a resolution of either House of Parliament<sup>2</sup>. Any power to make an order or regulations may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas<sup>3</sup>, and includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State<sup>4</sup> considers appropriate<sup>5</sup>.

1 Health Act 2006 s 79(1).

2 See the Health Act 2006 s 79(5). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

3 Health Act 2006 s 79(3)(a).

4 As to the Secretary of State see PARA 6 note 8.

5 See the Health Act 2006 s 79(3)(b).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/4. OTHER PROVISION RELATING TO HEALTH SERVICES/(1) VACCINE DAMAGE PAYMENTS/829. Payments to persons severely disabled by vaccination.

## **4. OTHER PROVISION RELATING TO HEALTH SERVICES**

### **(1) VACCINE DAMAGE PAYMENTS**

#### **829. Payments to persons severely disabled by vaccination.**

If, on consideration of a claim<sup>1</sup>, the Secretary of State<sup>2</sup> is satisfied that a person is, or was immediately before his death, severely disabled<sup>3</sup> as a result of vaccination against any one of certain diseases<sup>4</sup>, and that the conditions of entitlement are fulfilled<sup>5</sup>, he must make a payment of the relevant statutory sum<sup>6</sup> to or for the benefit of that person or to his personal representatives<sup>7</sup>. These provisions have effect with respect to a person who is severely disabled as a result of a vaccination given to his mother before he was born as if the vaccination had been given directly to him, and in certain circumstances<sup>8</sup> also have effect with respect to a person who is severely disabled as a result of contracting a disease through contact with a third person who was vaccinated against it as if the vaccination had been given to him and the disablement resulted from it<sup>9</sup>.

The conditions of entitlement to such a payment are:

- 593 (1) that the vaccination in question was carried out in the United Kingdom<sup>10</sup> or the Isle of Man<sup>11</sup> on or after 5 July 1948<sup>12</sup> and, in the case of vaccination against smallpox, before 1 August 1971<sup>13</sup>;
- 594 (2) except in the case of vaccination against poliomyelitis or rubella, that the vaccination was carried out either at a time when the person to whom it was given<sup>14</sup> was under the age of 18<sup>15</sup> or at the time of an outbreak within the United Kingdom or the Isle of Man of the disease against which the vaccination was given<sup>16</sup>; and
- 595 (3) that the disabled person was over the age of two on the date when the claim was made or, if he died before that date, that he died after 9 May 1978 and was over the age of two when he died<sup>17</sup>.

With respect to claims made after such date as may be specified in the order and relating to vaccination against such disease as may be so specified, the Secretary of State may by order made by statutory instrument provide that, in such circumstances as may be specified in the order, one or more of the conditions of entitlement appropriate to vaccination against that disease need not be fulfilled<sup>18</sup>; or add to the conditions of entitlement which are appropriate to vaccination against that disease, either generally or in such circumstances as may be specified in the order<sup>19</sup>.

1    Ie a claim under the Vaccine Damage Payments Act 1979. As to the making of a claim see PARA 830.

2    As to the Secretary of State see PARA 6 note 8.

3 For these purposes a person is severely disabled if he suffers disablement to the extent of 60% or more, assessed as for the purposes of the Social Security Contributions and Benefits Act 1992 s 103 (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 142) or equivalent Northern Ireland provisions: Vaccine Damage Payments Act 1979 s 1(4) (amended by the Social Security (Consequential Provisions) Act 1992 Sch 2 para 53; the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 Sch 2 para 21; SI 2002/1592).

4 Vaccine Damage Payments Act 1979 s 1(1)(a). The diseases to which the Vaccine Damage Payments Act 1979 applies are: diphtheria, tetanus, whooping cough, poliomyelitis, measles, rubella, tuberculosis and smallpox, together with any other disease specified by the Secretary of State for the purpose by order made by statutory instrument: s 1(2)(a)-(i). Diseases which have been so specified by order are: mumps, with effect from 9 April 1990 (see the Vaccine Damage Payments (Specified Disease) Order 1990, SI 1990/623, arts 1, 2); haemophilus influenzae type b, with effect from 31 May 1995 (see the Vaccine Damage Payments (Specified Disease) Order 1995, SI 1995/1164, arts 1, 2); meningococcal group C, with effect from 30 May 2001 (see the Vaccine Damage Payments (Specified Disease) Order 2001, SI 2001/1652, arts 1(a), 2); pneumococcal infection, with effect from 4 September 2006 (see the Vaccine Damage Payments (Specified Disease) Order 2006, SI 2006/2066, arts 1, 2). An order under the Vaccine Damage Payments Act 1979 s 1(2)(i) is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(5). Such an order specifying a disease may make appropriate modifications to the conditions of entitlement: s 2(2). As to the annulment of statutory instruments see **STATUTES** vol 44(1) (Reissue) PARA 1516.

5 Vaccine Damage Payments Act 1979 s 1(1)(b).

6 'Relevant statutory sum' means £100,000 or such other sum as is specified by the Secretary of State for the purposes by order made by statutory instrument with the consent of the Treasury; and the relevant statutory sum is the statutory sum at the time when a claim for payment is first made: Vaccine Damage Payments Act 1979 s 1(1A) (added by the Social Security Act 1985 s 23; and amended by SI 2000/1983). No order may be made by virtue of the Vaccine Damage Payments Act 1979 s 1(1A) unless a draft has been laid before Parliament and been approved by a resolution of each House: s 1(4A) (added by the Social Security Act 1985 s 23). The statutory sum is now £120,000: see the Vaccine Damage Payments Act 1979 Statutory Sum Order 2007, SI 2007/1931, art 2. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

7 Vaccine Damage Payments Act 1979 s 1(1) (amended by the Social Security Act 1985 s 23). As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq. Where vaccination is not compulsory a compensation scheme is a social security measure outside the scope of the European Convention on Human Rights: Application 8542/79 *Godfrey v United Kingdom* 27 DR 94 (1982), EComHR. As to that Convention see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 122-181.

8 In such circumstances as may be prescribed by regulations: Vaccine Damage Payments Act 1979 s 1(3). The prescribed circumstances are that: (1) the disabled person has been in close physical contact with a person who has been vaccinated against poliomyelitis with orally administered vaccine; (2) that contact occurred within a period of 60 days beginning with the fourth day immediately following that vaccination; and (3) the disabled person was, within that period, either looking after the vaccinated person or himself being looked after together with the vaccinated person: Vaccine Damage Payments Regulations 1979, SI 1979/432, reg 5A (added by SI 1979/1441). As to the making of regulations under the Vaccine Damage Payments Act 1979 see generally s 8 (amended by the Social Security Act 1998 Sch 7 para 9).

9 Vaccine Damage Payments Act 1979 s 1(3).

10 As to the meaning of 'United Kingdom' see PARA 15 note 8.

11 Vaccine Damage Payments Act 1979 s 2(1)(a)(i). Regulations must specify the cases in which vaccinations given outside the United Kingdom and the Isle of Man to persons defined in the regulations as serving members of Her Majesty's forces or members of their families are to be treated as carried out in England: Vaccine



Damage Payments Act 1979 s 2(5). As from a day to be appointed s 2(5) is repealed and replaced by the following: The Secretary of State may by order made by statutory instrument provide that, in such circumstances as may be specified in the order, the condition in s 2(1)(a)(i) need not be fulfilled in the case of vaccinations of persons of a description so specified which are given under arrangements made by or on behalf of Her Majesty's forces, a government department so specified, or any other body so specified: s 2(5A) (s 2(5A), (5B) prospectively added by the Welfare Reform Act 2007 s 56(1), (2)). Orders under the Vaccine Damage Payments Act 1979 s 2(5A) may make different provision in relation to different cases: s 2(5B) (as so prospectively added).

Vaccinations given outside the United Kingdom and the Isle of Man to serving members of Her Majesty's forces or members of their families are to be treated as carried out in England where the vaccination in question has been given as part of medical facilities provided under arrangements made by or on behalf of the service authorities: Vaccine Damage Payments Regulations 1979, SI 1979/432, reg 5(1). 'Serving members of Her Majesty's forces' means a member of the naval, military or air forces of the Crown or of any women's service administered by the Defence Council (reg 5(2)(a)); and a person is a member of the family of a serving member of Her Majesty's forces if he is the spouse or civil partner of that serving member, he and that serving member live together as husband and wife or as if they were civil partners, or he is a child whose requirements are provided by that serving member (reg 5(2)(b) (substituted by SI 2005/3070)). As to the meaning of 'England' see PARA 6 note 2. As to the Defence Council see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 443-447. As to civil partnerships see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW**.

12 Vaccine Damage Payments Act 1979 s 2(1)(a)(ii).

13 Vaccine Damage Payments Act 1979 s 2(1)(a)(iii).

14 In a case where the Vaccine Damage Payments Act 1979 has effect by virtue of s 1(3) (see the text to notes 8-9), the reference to the person to whom a vaccination was given is a reference to the person to whom it was actually given and not to the disabled person: s 2(3).

15 As to the time at which a person attains a particular age see PARA 36 note 7.

16 Vaccine Damage Payments Act 1979 s 2(1)(b). The condition of entitlement in s 2(1)(b) is omitted in relation to vaccination against meningococcal group C: Vaccine Damage Payments (Specified Disease) Order 2001, SI 2001/1652, art 3.

17 Vaccine Damage Payments Act 1979 s 2(1)(c).

18 Vaccine Damage Payments Act 1979 s 2(4)(a).

19 Vaccine Damage Payments Act 1979 s 2(4)(b). The Secretary of State must not make an order containing any provision made by virtue of s 2(4)(b) unless a draft of the order has been laid before Parliament and approved by a resolution of each House; and a statutory instrument by which any other order is made under s 2(4) is subject to annulment in pursuance of a resolution of either House of Parliament: s 2(6). As from a day to be appointed s 2(6) is amended so that the reference to s 2(4) is replaced by a reference to s 2: s 2(6) (prospectively amended by the Welfare Reform Act 2007 s 56(1), (3)). At the date at which this volume states the law no such day had been appointed. The Vaccine Damage Payments (Specified Disease) Order 2001, SI 2001/1652, has been made: see note 16.

## UPDATE

### 829 Payments to persons severely disabled by vaccination

NOTE 4--Further diseases to which the 1979 Act applies are (1) human papillomavirus (Vaccine Damage Payments (Specified Disease) Order 2008, SI 2008/2103); and (2) pandemic influenza A (H1N1) 2009 virus (Vaccine Damage Payments (Specified Disease) Order 2009, SI 2009/2516).

NOTE 16--The condition of entitlement in the 1979 Act s 2(1)(b) is omitted in relation to vaccination against (1) human papillomavirus (SI 2008/2103); and influenza caused by the pandemic influenza A (H1N1) 2009 virus (SI 2009/2516).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/4. OTHER PROVISION RELATING TO HEALTH SERVICES/(1) VACCINE DAMAGE PAYMENTS/830. Determination of claims.

### **830. Determination of claims.**

A claim for a payment in respect of vaccine damage<sup>1</sup> must be made to the Secretary of State<sup>2</sup> by or on behalf of the disabled person concerned or, as the case may be, by his personal representatives<sup>3</sup>, in the prescribed manner<sup>4</sup>, on or before whichever is the later of: (1) the date on which the disabled person attains the age of 21<sup>5</sup>, or where he has died, the date on which he would have attained the age of 21<sup>6</sup>, and (2) the end of the period of six years beginning with the date of the vaccination to which the claim relates<sup>7</sup>. As soon as practicable after he has received a claim, the Secretary of State must give notice in writing to the claimant of his determination whether he is satisfied that a payment is due to or for the benefit of the disabled person or to his personal representatives<sup>8</sup>. If the Secretary of State is satisfied that the conditions of entitlement are fulfilled<sup>9</sup>, but is not satisfied that the disabled person is or, where he has died, was immediately before his death severely disabled as a result of the vaccination<sup>10</sup>, the notice must inform the claimant of his right of appeal<sup>11</sup>.

Any decision of the Secretary of State<sup>12</sup>, and any decision of an appeal tribunal<sup>13</sup>, may be reversed by a decision made by the Secretary of State either within the prescribed period or in prescribed cases or circumstances<sup>14</sup>, and either on an application made for the purpose or on his own initiative<sup>15</sup>. In making such a decision, the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause him to act on his own initiative<sup>16</sup>. Except as provided<sup>17</sup>, no payment is recoverable by virtue of such a decision<sup>18</sup>.

The claimant may appeal to an appeal tribunal against any decision of the Secretary of State under the above provisions<sup>19</sup>. In deciding an appeal, an appeal tribunal must consider all the circumstances of the case (including any not obtaining at the time when the decision appealed against was made)<sup>20</sup>.

If, whether fraudulently or otherwise, any person misrepresents or fails to disclose any material fact and in consequence of the misrepresentation or failure a payment is made, the person to whom the payment was made is liable to repay the amount of that payment to the Secretary of State unless he can show that the misrepresentation or failure occurred without his connivance or consent<sup>21</sup>. Any person who, for the purpose of obtaining any payment, whether for himself or some other person, knowingly makes any false statement or representation<sup>22</sup>, or produces or furnishes or causes or knowingly allows to be produced or furnished any document or information which he knows to be false in a material particular<sup>23</sup>, commits an offence<sup>24</sup>.

Any decision made in accordance with the provisions of the Vaccine Damage Payments Act 1979 is final<sup>25</sup>. Regulations<sup>26</sup> may make provision with respect to the correction of accidental errors in any decision or record of a decision made by the Secretary of State or appeals tribunal under the above provisions, and the setting aside of any such decision in a case where it appears just to set the decision aside on certain grounds<sup>27</sup>.

1    le a payment under the Vaccine Damage Payments Act 1979 s 1(1): see PARA 829.

2    As to the Secretary of State see PARA 6 note 8.

3 See the Vaccine Damage Payments Act 1979 s 3(1)(a). As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.

4 See the Vaccine Damage Payments Act 1979 s 3(1)(b). Every claim for payment must be made in writing to the Secretary of State on the form approved by him, or in such other manner, being in writing, as he may accept as sufficient in the circumstances of any particular case or class of cases: Vaccine Damage Payments Regulations 1979, SI 1979/432, reg 2(1). Any person who has made a claim may amend his claim, at any time before a decision has been given thereon: see reg 2(2). Every person who makes a claim must furnish such certificates, documents, information and evidence for the purpose of determining the claim as may be required by the Secretary of State: reg 3. As to the meaning of 'writing' see PARA 7 note 2.

5 As to the time at which a person attains a particular age see PARA 36 note 7.

6 Vaccine Damage Payments Act 1979 s 3(1)(c)(i) (reg 3(1)(c) substituted by SI 2002/1592).

7 Vaccine Damage Payments Act 1979 s 3(1)(c)(ii) (as substituted: see note 6).

8 Vaccine Damage Payments Act 1979 s 3(2). If the Secretary of State is not satisfied that a payment is due, the notice in writing must state the grounds on which he is not so satisfied: s 3(3).

9 Vaccine Damage Payments Act 1979 s 3(4)(a). As to the conditions of entitlement see PARA 829.

10 Vaccine Damage Payments Act 1979 s 3(4)(b). If in any case a person is severely disabled, the question whether his severe disablement results from vaccination against any of the diseases to which the Vaccine Damage Payments Act 1979 applies (see PARA 829) must be determined on the balance of probability: s 3(5). Every disabled person in respect of whom a claim has been made must comply with every notice given to him or, where he is not the claimant, to the claimant by the Secretary of State which requires such disabled person to submit himself to a medical examination either by a medical practitioner appointed by the Secretary of State or by an appeal tribunal for the purpose of determining whether he is severely disabled as a result of vaccination against any of the diseases to which the Act applies: Vaccine Damage Payments Regulations 1979, SI 1979/432, reg 4(1) (amended by SI 1999/2677). Every such notice must be in writing and must specify the time and place of examination and must not require the disabled person to submit himself to examination before the expiration of the period of 14 days beginning with the date of the notice or such shorter period as may be reasonable in the circumstances: Vaccine Damage Payments Regulations 1979, SI 1979/432, reg 4(2). Travelling and other allowances for this purpose, and medical practitioners' fees, are payable by the Secretary of State: see the Vaccine Damage Payments Act 1979 s 12(2), (3) (s 12(2) amended by the Social Security (Consequential Provisions) Act Sch 2 para 54).

11 Vaccine Damage Payments Act 1979 s 3(4) (amended by the Social Security Act 1998 Sch 7 para 5).

12 Ie under the Vaccine Damage Payments Act 1979 s 3 (see the text to notes 1-11) or s 3A.

13 Ie under the Vaccine Damage Payments Act 1979 s 4: see the text to notes 19-20. Until a day to be appointed, 'appeal tribunal' means an appeal tribunal constituted under the Social Security Act 1998 Pt I Ch 1 (ss 1-7) (see **SOCIAL SECURITY AND PENSIONS**): Vaccine Damage Payments Act 1979 s 3A(6) (s 3A added by the Social Security Act 1998 s 45; Vaccine Damage Payments Act 1979 s 3A(6) prospectively repealed by the Welfare Reform Act 2007 Sch 7 para 1(1), (8), Sch 8). As from a day to be appointed, references to an 'appeal tribunal', without more, are to a tribunal constituted under the Social Security Act 1998 Pt I Ch 1 (ss 1-7), or the Social Security (Northern Ireland) Order 1998, SI 1998/1506 (NI 10), Pt 2 Ch 1: Vaccine Damage Payments Act 1979 s 9A (prospectively added by the Welfare Reform Act 2007 Sch 7 para 1(1), (8), Sch 8). At the date at which this volume states the law no such days had been appointed.

14 Vaccine Damage Payments Act 1979 s 3A(1)(a) (as added: see note 13). Regulations may prescribe the procedure by which a decision may be made: s 3A(3) (as so added). Such notice as may be prescribed by regulations must be given of a decision: s 3A(4) (as so added). As to the prescribed provisions see the Vaccine Damage Payments Regulations 1979, SI 1979/432, regs 11, 12 (reg 11 substituted, reg 12 added, by SI 1999/2677).

15 Vaccine Damage Payments Act 1979 s 3A(1)(b) (as added: see note 13).

16 Vaccine Damage Payments Act 1979 s 3A(2) (as added: see note 13).

17 le by the Vaccine Damage Payments Act 1979 s 5(4): see the text to note 21.

18 Vaccine Damage Payments Act 1979 s 3A(5) (as added: see note 13).

19 Vaccine Damage Payments Act 1979 s 4(1) (s 4 substituted by the Social Security Act 1998 s 46). Regulations may make provision as to the making and conduct of appeals: see s 4(2), (3) (as so substituted). As to the regulations made see the Social Security and Child Support (Decisions and Appeals) Regulations 1999, SI 1999/991 (amended by SI 1999/2677; SI 2002/1379; SI 2004/3368; SI 2005/337). The Secretary of State must pay such travelling and other allowances as he may determine to persons required to attend before a tribunal and, in circumstances where he considers it appropriate, to any person who accompanies a disabled person to a tribunal: see the Vaccine Damage Payments Act 1979 s 12(3).

20 Vaccine Damage Payments Act 1979 s 4(4) (as so substituted).

21 Vaccine Damage Payments Act 1979 s 5(4). Any such sums recovered must be paid into the Consolidated Fund: s 12(5). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711.

22 Vaccine Damage Payments Act 1979 s 9(1)(a).

23 Vaccine Damage Payments Act 1979 s 9(1)(b).

24 See the Vaccine Damage Payments Act 1979 s 9(1). The penalty for such offence is, on summary conviction, a fine not exceeding level 5 on the standard scale: see s 9(1) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 28 note 12. As to the penalty on conviction in the Isle of Man see the Vaccine Damage Payments Act 1979 s 9(2).

25 Vaccine Damage Payments Act 1979 s 7B(1) (s 7B added by the Social Security Act 1998 Sch 7 para 8). This provision is expressed to be subject to the provisions of the Vaccine Damage Payments Act 1979 and the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002, SI 2002/1592, art 4, Schedule (modifications of the Act in relation to transitional claims): Vaccine Damage Payments Act 1979 s 7B(1) (as so added; and amended by SI 2002/1592). If and to the extent that regulations so provide, any finding of fact or other determination embodied in or necessary to such a decision, or on which such a decision is based, is conclusive for the purposes of further such decisions and decisions under certain other statutory provisions: see the Vaccine Damage Payments Act 1979 s 7B(2) (as so added). At the date at which this volume states the law no such regulations had been made. As to judicial review of decisions expressed to be final see **JUDICIAL REVIEW** vol 61 (2010) PARA 655.

26 As to the making of regulations see the Vaccine Damage Payments Act 1979 s 8 (amended by the Social Security Act 1998 Sch 7 para 9).

27 See the Vaccine Damage Payments Act 1979 s 7A (added by the Social Security Act 1998 s 47). As to the provision made see the Social Security and Child Support (Decisions and Appeals) Regulations 1999, SI 1999/991 (as amended: see note 19).

## **UPDATE**

### **830 Determination of claims**

TEXT AND NOTES--Appeals are now made to the First-tier Tribunal rather than to an appeal tribunal: see the Vaccine Damage Payments Act 1979 (ss 3A, 4, 7A, 12(3) amended, s 9A repealed by SI 2008/2833).

NOTE 19--As to Social Security and Child Support (Decisions and Appeals) Regulations 1999, SI 1999/991 see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 557 NOTE 2.

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### **831. Making of payments; claims prior to the Act.**

Where a payment in respect of vaccine damage<sup>1</sup> falls to be made in respect of a disabled person who is over 18<sup>2</sup> and capable of managing his own affairs, the payment must be made to him<sup>3</sup>; or where a payment falls to be made in respect of a disabled person who has died, the payment must be made to his personal representatives<sup>4</sup>. Where such a payment falls to be made in respect of any other disabled person, the payment must be made for his benefit by paying it to such trustees as the Secretary of State<sup>5</sup> may appoint to be held by them upon such trusts as may be declared by the Secretary of State<sup>6</sup>.

The making of a claim for, or the receipt of a payment does not prejudice the right of any person to institute or carry on proceedings in respect of disablement suffered as a result of vaccination against any disease to which the Vaccine Damage Payments Act 1979 applies<sup>7</sup>.

Special provision is made in relation to payments of £10,000 made by the Secretary of State to or in respect of a disabled person after 9 May 1978 and before 22 March 1979<sup>8</sup> pursuant to a non-statutory scheme of payments for severe vaccine damage and their effect on claims made for payment under the Vaccine Damage Payments Act 1979<sup>9</sup>.

1   Ie a payment under the Vaccine Damage Payments Act 1979 s 1(1): see PARA 829.

2   As to the time at which a person attains a particular age see PARA 36 note 7.

3   Vaccine Damage Payments Act 1979 s 6(1).

4   Vaccine Damage Payments Act 1979 s 6(2). As to personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 1 et seq.

5   As to the Secretary of State see PARA 6 note 8.

6   Vaccine Damage Payments Act 1979 s 6(3). In Scotland the payment is to be held by the trustees for such purposes and upon such conditions as may be declared by the Secretary of State: see s 6(3).

7   Vaccine Damage Payments Act 1979 s 6(4). However, in any civil proceedings brought in respect of disablement resulting from vaccination against such a disease, the court must treat a payment made to or in respect of the disabled person concerned under s 1(1) (see PARA 829) as paid on account of any damages which the court awards in respect of such disablement: s 6(4). As to the diseases to which the Vaccine Damage Payments Act 1979 applies see PARA 829.

8   Ie the date of the passing of the Vaccine Damage Payments Act 1979.

9 See the Vaccine Damage Payments Act 1979 s 7 (amended by the Social Security Act 1998 Sch 7 para 7, Sch 8).



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## **(2) VOLUNTARY HOSPITALS**

### **832. Accommodation for and charges to paying patients.**

Notwithstanding the trusts express or implied upon which the property and funds of a voluntary hospital<sup>1</sup> are held<sup>2</sup> and notwithstanding any prohibition or restriction imposed by or under any local Act<sup>3</sup>, the committee of management<sup>4</sup> may provide and maintain on such land from time to time belonging to them such new buildings or such existing buildings of the hospital, or such parts of such new or existing buildings and such and so many beds therein and for such period as the Charity Commission<sup>5</sup> may on the application of the committee of management from time to time by order<sup>6</sup> authorise, for the accommodation and treatment of patients who are able and willing to make payment therefor<sup>7</sup>.

The committee of management may charge such patients for accommodation and maintenance (including such medical and surgical attendance and treatment as is given by the resident staff of the hospital) in accordance with such scale of charges as may be specified in an order<sup>8</sup>. The Charity Commission may, from time to time on the application of the committee of management, vary an order; and, if in the opinion of the Commission there has been any material change in the circumstances existing at the time when an order was made, it may, after giving to the committee of management and to any other persons appearing to the Commission to be concerned an opportunity of making representations, of its own motion vary or revoke the order<sup>9</sup>.

1 'Voluntary hospital' means an institution (not being an institution which is carried on for profit or which is maintained wholly or mainly at the expense of the rates or which is vested in an NHS trust, an NHS foundation trust or a primary care trust or which is vested in the Secretary of State) which provides medical or surgical treatment for in-patients: Voluntary Hospitals (Paying Patients) Act 1936 s 1 (definition amended by the National Health Service Act 1946 Sch 10; the National Health Service and Community Care Act 1990 Sch 9 para 2(a); SI 2000/90; the Health and Social Care (Community Health and Standards) Act 2003 Sch 4 paras 1, 2). 'NHS trust' means a National Health Service trust established under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 (see PARA 155): Voluntary Hospitals (Paying Patients) Act 1936 s 1 (definition added by the National Health Service and Community Care Act 1990 Sch 9 para 2(b); and amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 paras 1, 2(a)). As to NHS foundation trusts see PARA 174. As to primary care trusts see PARA 111. As to the Secretary of State see PARA 6 note 8. All voluntary hospitals and all hospitals belonging to local authorities were, with certain exceptions, transferred to and vested in the Minister of Health on 5 July 1948: see the National Health Service Act 1946 s 6 (repealed); and PARA 4.

2 As to the protection of existing trusts see PARA 834.

3 le being an Act relating expressly to the hospital, charter, scheme, deed, will, or otherwise, not being a prohibition or restriction imposed by a public general Act or by any local Act not so relating. As to local Acts see **STATUTES** vol 44(1) (Reissue) PARA 1213.

4 'Committee of management' includes any body or persons having the management or control of a voluntary hospital: Voluntary Hospitals (Paying Patients) Act 1936 s 1. As to the meaning of 'person' see PARA 17 note 2.

5 As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

6 'Order' means an order made by the Charity Commission for any of the purposes specified in the Voluntary Hospitals (Paying Patients) Act 1936 s 2(1): s 1 (definition amended by the Charities Act 2006 Sch 8 paras 21, 22).

7 Voluntary Hospitals (Paying Patients) Act 1936 s 2(1) (s 2(1), (3) amended by the Charities Act 2006 Sch 8 paras 21, 23(1), (2)). As to the power of the Charity Commission to make rules in relation to applications see PARA 835.

8 Voluntary Hospitals (Paying Patients) Act 1936 s 2(2). An order may include any consequential or incidental provisions appearing to the Charity Commission to be necessary or desirable: s 2(3) (as amended: see note 7). As to provision in the scale of charges for patients unable to make full payment see PARA 833.

9 Voluntary Hospitals (Paying Patients) Act 1936 s 2(4) (amended by the Charities Act 2006 Sch 8 paras 21, 23(1), (2), (3)).

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### **833. Provision for patients able to make some, but not full, payment.**

Except where the Charity Commission<sup>1</sup> is satisfied that it would be inappropriate in the circumstances so to do, it must include in the scale of charges specified in an order<sup>2</sup> charges fixed with a view to meeting the needs of patients who, though able to make some payment, are unable to pay charges sufficient to meet the full expense to the voluntary hospital<sup>3</sup> of their accommodation and maintenance (including such medical and surgical attendance and treatment as is given by the resident staff of the hospital), and must make it a condition of the order that in the use of a number to be specified therein of the beds whose maintenance is authorised thereby priority must be given to such patients<sup>4</sup>.

An order may, in cases where the committee of management<sup>5</sup> have not the power so to do apart from an order, authorise them to defray out of any funds applicable to the general purposes of the hospital the difference between the full expense to the hospital of the accommodation and maintenance (including such medical and surgical attendance and treatment as is given by the resident staff of the hospital) of such patients on the one hand, and the sums with which those patients are charged under the authority of the order on the other hand<sup>6</sup>.

1 As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

2 As to the meaning of 'order' see PARA 832 note 6. As to applications for an order and the scale of charges see PARA 832.

3 As to the meaning of 'voluntary hospital' see PARA 832 note 1.

4 Voluntary Hospitals (Paying Patients) Act 1936 s 3(1) (amended by the Charities Act 2006 Sch 8, paras 21, 24).

5 As to the meaning of 'committee of management' see PARA 832 note 4.

6 Voluntary Hospitals (Paying Patients) Act 1936 s 3(2).

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### **834. Provision for protection of existing trusts.**

The Charity Commission<sup>1</sup> must not make an order<sup>2</sup> authorising any use or application of property or funds of a voluntary hospital<sup>3</sup> which, apart from the order, would involve a breach of any trusts upon which the property or funds are held or a contravention of any prohibition or restriction imposed by or under any local Act<sup>4</sup>:

596 (1) on an application for authority to use land, unless it is satisfied that if the order were not made the land would not come into use for the purposes for which the trusts were created or the prohibition or restriction was imposed, until after the expiration of a substantial period from the date of the application<sup>5</sup>;

597 (2) on an application for authority to use existing buildings or part of existing buildings, unless it is satisfied:

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1. (a) that the use of the buildings or part thereof for the purposes for which the trusts were created or the prohibition or restriction was imposed is impracticable, or is likely soon so to become, because the committee of management<sup>6</sup> has not at its disposal, and will be unable to obtain, sufficient funds to enable the buildings or that part thereof to be, or to continue to be, so used<sup>7</sup>;
2. (b) that the use of the buildings or part thereof for those purposes is impracticable, or is likely soon so to become because of a shortage of demand for accommodation on the part of the persons for whose benefit the trusts were created or the prohibition or restriction was imposed<sup>8</sup>; or
3. (c) that the committee of management has, or is likely soon to have, at its disposal premises which could be put to the use to which the application relates without breach of any trust upon which those premises are held or contravention of any such prohibition or restriction and that the buildings or part thereof will be used by way of exchange for those premises<sup>9</sup>;

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598 (3) in any case, unless it is satisfied that the authorisation will not diminish or restrict the accommodation for those persons for whose benefit the trusts were created or the prohibition or restriction was imposed which is provided in the hospital at the date of the application for the order and which the committee of management would be able to continue to provide if the order were not made<sup>10</sup>.

1 As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

2 As to the meaning of 'order' see PARA 832 note 6. As to applications for orders see PARA 832.

3 As to the meaning of 'voluntary hospital' see PARA 832 note 1.

4 As to such prohibitions or restrictions see PARA 832.

5 Voluntary Hospitals (Paying Patients) Act 1936 s 4(a) (s 4 amended by the Charities Act 2006 Sch 8 paras 21, 25).

6 As to the meaning of 'committee of management' see PARA 832 note 4.

7 Voluntary Hospitals (Paying Patients) Act 1936 s 4(b)(i) (as amended: see note 5).

8 Voluntary Hospitals (Paying Patients) Act 1936 s 4(b)(ii) (as amended: see note 5).

9 Voluntary Hospitals (Paying Patients) Act 1936 s 4(b)(iii) (as amended: see note 5).

10 Voluntary Hospitals (Paying Patients) Act 1936 s 4(c) (as amended: see note 5).

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### **835. Power of the Charity Commissioners to make rules.**

The Charity Commission<sup>1</sup> may make rules in relation to applications for orders<sup>2</sup> and proceedings in connection therewith<sup>3</sup>. The Charity Commission may require such sum as it may determine to represent costs or expenses incurred by it<sup>4</sup> to be provided out of any funds, being funds under the control of the committee of management<sup>5</sup> of the voluntary hospital<sup>6</sup> in relation to which the expenses are incurred, whether representing capital or income, which in the opinion of the Charity Commission may properly be made applicable for that purpose<sup>7</sup>.

1 As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

2 As to the meaning of 'order' see PARA 832 note 6. As to applications for orders see PARA 832.

3 See the Voluntary Hospitals (Paying Patients) Act 1936 s 5(1) (amended by the Charities Act 2006 Sch 8 paras 21, 26(1), (2)). Any such rules must be laid before Parliament as soon as may be after they are made: Voluntary Hospitals (Paying Patients) Act 1936 s 5(2). As to the rules made see the Rules dated 15 September 1936, SR & O 1936/1025. Rules made under the Voluntary Hospitals (Paying Patients) Act 1936 s 5 are now subject to the Statutory Instruments Act 1946: see **STATUTES** vol 44(1) (Reissue) PARA 1501. As to the laying of documents before Parliament see **PARLIAMENT** vol 34 (Reissue) PARA 941.

4 In the exercise of the powers conferred upon it by the Voluntary Hospitals (Paying Patients) Act 1936, including a sum in respect of the services of a member of staff engaged in an inquiry under the rules made by it.

5 As to the meaning of 'committee of management' see PARA 832 note 4.

6 As to the meaning of 'voluntary hospital' see PARA 832 note 1.

7 Voluntary Hospitals (Paying Patients) Act 1936 s 5(3) (amended by the Charities Act 2006 Sch 8 paras 21, 26(1), (3)).

Halsbury's Laws of England/HEALTH SERVICES (VOLUME 54 (2008) 5TH EDITION)/4. OTHER PROVISION RELATING TO HEALTH SERVICES/(3) HOSPITAL BUILDING CONTROL/836. Hospital building control.

### **(3) HOSPITAL BUILDING CONTROL**

#### **836. Hospital building control.**

The Health Services Act 1976<sup>1</sup>, now repealed<sup>2</sup>, imposed controls on the provision or extension of certain private hospital facilities. Notwithstanding its repeal, the Act continues to have effect in relation to any authorisation<sup>3</sup> granted by the Secretary of State<sup>4</sup> thereunder<sup>5</sup> which was in force when the repeal took effect<sup>6</sup>.

1    Ie the Health Services Act 1976 Pt III (ss 12-20) (repealed).

2    Ie by the National Health Service and Community Care Act 1990 ss 63(1), 66(2), Sch 10.

3    'Authorisation' means authorisation under the Health Services Act 1976 to execute controlled works: ss 12(1), 20 (repealed). 'Controlled works' means works for the construction of controlled premises or of a controlled extension of such premises, or works for converting any premises into controlled premises: ss 12(2), 20 (repealed). 'Controlled premises' means hospital premises which provide or will provide beds for the use of patients, being hospital premises in the case of which the number of beds provided will be 120 or more, or which will or are to be situated in designated areas: s 12(2) (repealed) (definition substituted by the Health Services Act 1980 s 12(1) (also repealed)). 'Hospital premises' are premises at which there are or are to be facilities for the provision of hospital services, namely, the carrying out of surgical procedures under general anaesthesia, obstetrics, radiotherapy, haemodialysis or peritoneal dialysis, and pathology or diagnostic radiology: Health Services Act 1976 s 12(2) (repealed) (amended by the Health Services Act 1980 s 12(1) (also repealed)). Areas were designated under the Health Services Act 1976 s 12(2A)-(2C) (repealed) (added by the Health Services Act 1980 s 12(1) (also repealed)). 'Controlled extension', in relation to controlled premises, means work designed to extend, adapt or be used in conjunction with the controlled premises, or works designed to extend or adapt works used in conjunction with the controlled premises: Health Services Act 1976 s 12(2) (repealed).

4    As to the Secretary of State see PARA 6 note 8.

5    See the Health Services Act 1976 s 13(2) (repealed) (amended by the Health Services Act 1980 Schs 2, 3 (also repealed)).

6    National Health Service and Community Care Act 1990 s 63(2)(a). The repeal of the Health Services Act 1976 Pt III took effect on 1 April 1991: National Health Service and Community Care Act 1990 (Commencement No 1) Order 1990, SI 1990/1329, art 2(8), Sch 3.